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THE TRIAL OF JESUS CHRIST

THE

TRIAL OF JESUS CHRIST

A LEGAL MONOGRAPH

BY

A. TAYLOR INNES

ADVOCATE

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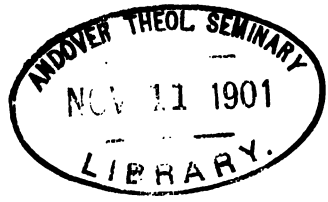

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THE TRIAL OF JESUS CHRIST

MEN have too much forgotten that the central event in history assumed the form of a judicial trial.

The prodigious influence of the life and personality of Jesus of Nazareth is admitted by all. But His tragical death, early and passionately accepted by Christianity as the significant fact of His career, has become more than any other incident the starting-point of modern history—His tomb, as Lamartine put it, was the grave of the old world and the cradle of the new. Yet that memorable transaction was the execution of a capital sentence, proceeding upon a twofold criminal trial—upon one process conducted under Hebrew and one under Roman law.

In its forensic aspect, as in some others, it is peculiar — perhaps unique. There have been many judicial tragedies recorded in history.

Capital trials, like those of Socrates, of Charles of England, and of Mary of Scotland, have always had a fascination for men. And this trial has impressed and attracted the world more than any or all of these. But these pages recall to general readers—what scholars have long known—that it has in addition a purely legal interest which no one of them possesses. By common consent of lawyers, the most august of all jurisprudences is that of ancient Rome. But perhaps the most peculiar of all jurisprudences, and in the eyes of Christendom the most venerable as well as peculiar, is that of the Jewish Commonwealth. And whenever these two famous and diverse systems happen for a moment to intersect each other, the investigation, from a legal point of view, of the transaction in which they meet is necessarily interesting. But when the two systems meet in the most striking and influential event that has ever happened, its investigation at once becomes not only interesting, but important. It becomes, undoubtedly, the most interesting isolated problem which historical jurisprudence can present.

And the problem is not only interesting, but difficult. For questions such as the following

are at once raised:—Were there two trials, or only one? Was the second a mere review of the first, or was the first a mere preliminary to the second?

Farther, were the forms, in the one case of Hebrew, in the other of Roman, law observed, or attempted to be observed? And was there in either case an attempt, with or without form, to attain substantial justice?

Again, were the charges preferred before the Hebrew and Roman tribunals the same, or nearly so? What was the crime for which the accused died?

Lastly, as to the decision. Was it in either case right in form, and attained by steps in conformity with the process which was binding (or was observed) at the time? And was it right in substance, *i.e.* was it, if not just, at least legal—in conformity with the Hebrew law, or the Roman law, as those laws then stood?

These questions of law proceed of course upon an assumed or ascertained history of fact. The history is abundantly familiar; and, fortunately, there is no special necessity that we should commence this inquiry by an examination of the sources. Men are not agreed

how far back they can exactly trace the three Gospels on the one hand, or the Fourth Gospel of John on the other. But the detail, verisimilitude, and authoritative calm of all these documents, impress the reader with a sense of close proximity to the life narrated—proximity, at least, on the part of the original oral narrators. And they have no competitors. A few words in Tacitus, a disputed sentence or two in Josephus, occasional execrations scattered throughout the Talmud,—these and such as these are the outside references to a career which burned itself in detail into the hearts of a generation of surviving disciples, and thence into the imagination of the world. To some readers it will appear a singular advantage that, so far as the documents bear on this special legal question, there is no reference to miracle. In none of the four records of the trial is there (after the first arrest) any touch of the supernatural in *that* sense of the word. The whole narrative of external fact might have been told of any morning's work of the Sanhedrin, of any forenoon condemnation by the Procurator. We may not indeed stretch this too far. The judicial narrative, unbroken by actual portent or marvel, maintains in each Gospel the same

tone of supernatural consciousness which in previous pages, apparently without surprise or break or sense of effort, passes into actual external miracle. Yet it remains true that in the fragment of fourfold history with which we at present deal, there is nothing which the most determined enemy of the supernatural needs to question. In truth, the incidents of the trial are most natural and probable, and, in so far as the traditions agree, there seems no excuse for doubting the history.

Of course the four do not agree in all details, here or elsewhere. The variations in the utterances reported by different Gospels warn readers to expect a similar independence in narration of facts. And sometimes this cuts deep into the history, as in the matter of chronology. A doubt exists even as to the number of years during which the prophetic ministry lasted which this trial was now to close. A similar question has been raised as to the hours occupied by the tragic execution which followed on this very day. Neither of these points, however, directly concerns the legal side of the trial. We do not need to solve even the still more famous and ancient problem, whether the death took place on the 14th or the 15th day of

Nisan—the day before, or the day after, the Passover. For, whatever day it was, no one doubts that such a death, proceeding upon a Roman sentence, actually took place on the Friday of that week. Nor is it doubted by anyone; or that the Roman sentence and execution followed upon an arrest which happened on the immediately preceding night—so that the Hebrew judicial proceedings, whatever these were, must have been interposed between the previous sunset and that morning session in the Prætorium. The chronological difficulties, even when they are outside of the actual trial, will no doubt ultimately affect the relative value of our sources. Yet it must be remembered that even if one of the Gospels were shown to be irreconcilable with the others, and with history —say, in a chronological matter contemporaneous with that of which we here treat—it does not by any means at once follow that its narrative of the trial itself may not have high historic value. Each tradition or narration, and each part of it, must be looked at upon its own merits; and when criticism has settled the weight of apostolic or contemporary authority which belongs to each, the resulting stereoscope (at present somewhat blurred in the superim-

position) will finally take solid shape. Meantime a lawyer, who is not himself also a critic, may remark that the mere independence of two or more narratives by no means tends to suggest doubt as to the story they convey. And while their variations, in so far as these affect the legal question before us, will call for careful consideration, we shall find that the basis of fact is on the whole satisfactory.

I give on a following page the fourfold narrative of the Hebrew, as subsequently of the Roman, trial. And to allow readers closer access to the original, I take the English from the Revised Version.

FROM MR. HOLMAN HUNT'S
"FINDING OF THE SAVIOUR IN THE TEMPLE."

THE HEBREW TRIAL

"Thou, if Thou wast He, who at midnight came
By the star-light, naming a dubious name!
And if, too heavy with sleep, too rash
With fear—O Thou, if that martyr-gash
Fell on Thee coming to take Thine own,
And we gave the Cross, when we owed the Throne."

Robert Browning's "Holy-Cross Day."

THE FOUR NARRATIVES.

MATTHEW

And while he yet spake, lo, Judas, one of the twelve, came, and with him a great multitude with swords and staves, from the chief priests and elders of the people. . . . Then they came and laid hands on Jesus, and took him. . . . In that hour said Jesus to the multitudes, Are ye come out as against a robber with swords and staves to seize me? I sat daily teaching in the temple, and ye took me not. . . . And they that had taken Jesus led *him* away to *the house of* Caiaphas the high priest, where the scribes and the elders were gathered together. . . . Now the chief priests and the whole council sought false witness against Jesus, that they might put him to death; and they found it not, though many false witnesses came. But afterward came two, and said, This man said, I am able to destroy the temple of God, and to build it in three days. And the high priest stood up, and said unto him, Answerest thou nothing? what is it which these witness against thee? But Jesus held his peace. And the high priest said unto him, I adjure thee by the living God, that thou tell us whether thou be the Christ, the Son of God. Jesus saith

MARK

And straightway, while he yet spake, cometh Judas, one of the twelve, and with him a multitude with swords and staves, from the chief priests and the scribes and the elders. . . . And they laid hands on him, and took him. . . . And Jesus answered and said unto them, Are ye come out, as against a robber, with swords and staves to seize me? I was daily with you in the temple teaching, and ye took me not: but this is *done* that the scriptures might be fulfilled. . . . And they led Jesus away to the high priest: and there come together with him all the chief priests and the elders and the scribes. . . . Now the chief priests and the whole council sought witness against Jesus to put him to death; and found it not. For many bare false witness against him, and their witness agreed not together. And there stood up certain, and bare false witness against him, saying, We heard him say, I will destroy this temple that is made with hands, and within three days I will build another made without hands. And not even so did their witness agree together. And the high priest stood up in the midst, and asked Jesus, saying,

THE FOUR NARRATIVES.

LUKE

While he yet spake, behold, a multitude, and he that was called Judas, one of the twelve, went before them, and he drew near unto Jesus to kiss him. . . . And Jesus said unto the chief priests, and captains of the temple, and elders, which were come against him, Are ye come out, as against a robber, with swords and staves? When I was daily with you in the temple, ye stretched not forth your hands against me: but this is your hour, and the power of darkness. And they seized him, and led him *away*, and brought him into the high priest's house. . . . And the men that held *Jesus* mocked him, and beat him. And they blindfolded him, and asked him, saying, Prophesy: who is it that struck thee? And many other things spake they against him, reviling him. And as soon as it was day, the assembly of the elders of the people was gathered together, both chief priests and scribes; and they led him away into their council, saying, If thou art the Christ, tell us. But he said unto them, If I tell ye, ye will not believe: and if I ask *you*, ye will not answer. But from henceforth shall the Son of man be seated at the right

JOHN

Judas then, having received the band of soldiers, and officers from the chief priests and the Pharisees, cometh thither with lanterns and torches and weapons. . . . So the band and the chief captain and the officers of the Jews, seized Jesus and bound him, and led him to Annas first; for he was father in law to Caiaphas, which was high priest that year. Now Caiaphas was he which gave counsel to the Jews, that it was expedient that one man should die for the people. And Simon Peter followed Jesus, and *so did* another disciple. Now that disciple was known unto the high priest, and entered in with Jesus into the court of the high priest. . . . The high priest therefore asked Jesus of his disciples, and of his teaching. Jesus answered him, I have spoken openly to the world; I ever taught in synagogues, and in the temple, where all the Jews come together; and in secret spake I nothing. Why askest thou me? ask them that have heard me, what I spake unto them: behold, these know the things which I said. And when he had said this, one of the officers standing by struck Jesus with his hand, saying, Answerest

THE FOUR NARRATIVES.

MATTHEW

unto him, Thou hast said: nevertheless I say unto you, Henceforth ye shall see the Son of man sitting at the right hand of power, and coming on the clouds of heaven. Then the high priest rent his garments, saying, He hath spoken blasphemy; what further need have we of witnesses? behold, now ye have heard the blasphemy: what think ye? They answered and said, He is worthy of death. Then did they spit in his face and buffet him; and some smote him with the palms of their hands, saying, Prophesy unto us, thou Christ: who is he that struck thee? . . . Now when morning was come, all the chief priests and the elders of the people took counsel against Jesus to put him to death: and they bound him, and led him away, and delivered him up to Pilate the governor.

MARK

Answerest thou nothing? what is it which these witness against thee? But he held his peace, and answered nothing. Again the high priest asked him, and saith unto him, Art thou the Christ, the Son of the Blessed? And Jesus said, I am: and ye shall see the Son of man sitting at the right hand of power, and coming with the clouds of heaven. And the high priest rent his clothes, and saith, What further need have we of witnesses? Ye have heard the blasphemy: what think ye? And they all condemned him to be worthy of death. And some began to spit on him, and to cover his face, and to buffet him, and to say unto him, Prophesy: and the officers received him with blows of their hands. . . . And straightway in the morning the chief priests with the elders and scribes, and the whole council, held a consultation, and bound Jesus, and carried him away, and delivered him up to Pilate.

THE FOUR NARRATIVES.

LUKE

hand of the power of God. And they all said, Art thou then the Son of God? And he said unto them, Ye say that I am. And they said, What further need have we of witness? for we ourselves have heard from his own mouth. And the whole company of them rose up, and brought him before Pilate.

JOHN

thou the high priest so? Jesus answered him, If I have spoken evil, bear witness of the evil: but if well, why smitest thou me? Annas therefore sent him bound unto Caiaphas the high priest. . . . They lead Jesus therefore from Caiaphas into the palace (Prætorium): and it was early.

THE HEBREW TRIAL

ALL modern readers know that the Hebrew commonwealth, and the institutions which regulated it, were pervaded by a deep sentiment of justice and law. But all are not aware of the extent to which that sentiment, and its characteristic maxim, "Thou shalt do no unrighteousness in judgment," were developed in the later history of the people. In the more ancient part of the traditions of the Fathers, we read, "When a judge decides not according to truth, he makes the majesty of God to depart from Israel. But if he judges according to truth, were it only for one hour, it is as if he established the whole world, for it is in judgment that the Divine presence in Israel has its habitation." It was a few years ago pointed out to English readers that that whole vast later literature of the Jews which we call the Talmud is "emphatically a *Corpus Juris*—a cyclopædia of all law," which may best be judged by analogy and comparison with other legal codes, more especially with that of Rome and its commentaries. It con-

tains many other things, but this is its basis. And what is more important for us to notice, is that this legal basis is the older part. The whole Talmud consists of forty folios—a mass of discussion, illustration, and commentary. But the central part of it, which is comprised in twelve volumes, is called the Mishna, *i.e.* the Tradition. And the Mishna is nearly wholly law.[1] The name was indeed of old translated as the second or oral law — the δευτέρωσις—a detailed traditional commentary on the written law of Moses, to which it professed complete subjection, while practically superseding it as a code.[2] Mr. Deutsch, in striving to give English readers an idea of the multiplicity and confusion of the Talmud, likens it to Hansard: "The Parliamentary discussions or episodes answering to the Gemara

[1] The quotations in this volume are made from the edition of the Mishna by Surenhusius (Amsterdam, 1672); and especially from the chapter or tractate *De Synedriis*, in the fourth of its twelve volumes. I accept the Latin translation of the editor, and have only occasionally verified a word of the Hebrew original.

[2] The Mishna (*De Synedriis*, x. 3) lays down the startling principle, "Gravius peccatur circa verba scribarum, quam verba legis." As an enthusiastic and admiring translator paraphrases it, "He who teaches against the Pentateuch is not condemned to death, for all men know the Bible. But if he teaches against the doctors, he is condemned" (Rabbinowicz, *Législation Criminelle du Talmud*, Paris).

or general commentary, while the Bills or Acts are called the Mishna." The distinction of course is, that in Hansard the legislative Acts are the result and termination of the discussions, while in the Talmud the Mishna or law is the older portion and the starting-point. Accordingly, while portions of the general Talmud commentary did not come into existence for many centuries after the introduction of Christianity, the compilation of the whole Mishna, or central portion, was begun by Rabbi Judah, somewhere about 200 A.D. But the Rabbi founded his own views in it on those of the earlier and famous Rabbi Meir, and goes back for his traditions through the two Gamaliels to his own direct ancestor, Hillel, contemporary of Jesus, and himself a gatherer of the past. And while the oral law had thus been transmitted from mouth to mouth for centuries, two of its treatises are known to have been gathered together a hundred years before Rabbi Judah proceeded to compile the whole. So, when it was at last compiled, it was apparently as an oral law which had been growing in use and authority ever since the return of the nation from Babylon—as a "brief abstract of about eight hundred years' legal production."

Hence modern Jewish writers have referred to it without hesitation as including the code of criminal law in existence at the date of the high-priestship of Annas and Caiaphas. Of course this cannot be matter of demonstration in the case of all portions of a book which was not finally reduced to writing until centuries had passed. But the evidence shows that the development of the Mishna in the direction of precaution against legal injustice or negligence was exceptionally early and strong. Its earliest period coincided with the time of "the Men of the Great Synagogue," stretching from the Return from the Captivity to about 220 B.C. Their work has been summed up in the leading aphorism of the *Pirké Avoth*, which runs, "Be cautious and slow in judgment, send forth many disciples, and *make a fence round the law.*"[1] And this age, which inculcated caution in judicial action before all other things, was succeeded by the so-called age of "the Sanhedrin," which for the next four hundred years worked out that caution in detail.

In nothing is the Mishna more express than

[1] Mishna, *Capita Patrum*, i. 1. The same order of precedence is observed in the chief saying of their great representative, Simon the Just: "On three things stands the world—*on law*, on worship, and on charity" (*Cap. Patrum.* i. 2).

in the contrast recognised at an early time between civil and criminal proceedings—judgments "of money" and judgments "of the life." Even with regard to the former, its rules strike the modern legal mind as leaning to the side of pedantic caution. But with regard to criminal, and especially to capital, cases, there can be no doubt that long before the time of Jesus the value set by the law upon the life of a Hebrew citizen had led to extraordinary precautions. What have been called the four great rules of their criminal jurisprudence—"strictness in the accusation, publicity in the discussion, full freedom granted to the accused, and assurance against all dangers or errors of testimony"[1]—are carried out even in the Mishna in minute and scrupulous rules, leaning almost ostentatiously in every point to the side of the accused. And they ruled most of all in the case of a trial for life. Indeed, so far does this go, that modern Jews have been disposed to represent capital punishment as abhorrent to the whole genius of Hebrew jurisprudence. We read in the oral law the saying of Eleazar the son of Azarias, that "the Sanhedrin, which so often as once in seven years

[1] Salvador, *Inst. de Moïse*, i. 365.

condemns a man to death, is a slaughter-house."[1] And more startling still, when we remember the Hebrew dread of all anthropomorphism in speaking of the Divine, is that terrible sentence of Rabbi Meir: "What doth God say (if one may speak of God after the manner of men) when a malefactor suffers the anguish due to his crime? He says, *My head and my limbs are pained.* And if He so speaks of the suffering even of the guilty, what must He utter when the righteous is condemned?"[2] And so, to save the innocent blood, to hedge round and shelter the sacred house of life, rule after rule was laid down in successive lines of circumvallation, and presumptions in favour of the accused were accumulated, until a false conviction became almost impossible.

Were the rules observed—was the law obeyed —in the trial of Jesus of Nazareth?

The question whether the Hebrew trial was according to their own rules of law has perhaps not been exhaustively considered by any one writer, though it has been touched upon by many. The most celebrated discussion upon it was raised by a learned Spanish Jew, M.

[1] Mishna, treatise *Makhoth.*
[2] Mishna, *De Synedriis*, vi. 5.

Salvador, who in 1822, in the first edition of a work since twice republished under the title of *Histoire des Institutions de Moïse*,[1] gave two careful chapters on the penal law of the later Jews and on their administration of justice, and followed them up by a dissertation to show that the *Jugement de Jésus* was according to law. He admitted the facts as stated in the Gospels, and founded on the law as stated in the Mishna; and from these sources professed to prove that while the result may have been unfortunate if Jesus was really the Messiah, the process followed and the result arrived at were alike necessary, if the tribunal adhered to its own law. Salvador was answered in a brilliant treatise by a distinguished member of the French bar, M. Dupin (aîné). He, however (like an able American writer, Mr. Greenleaf), devoted himself rather to the substantial injustice of the trial than to its form, according to the jurisprudence concerned; and in the third edition of his *Institutions*, published in 1862, Salvador maintains and reprints the whole positions originally laid down. His argument, however, falls short of its conclusion on the

[1] The third edition, in two volumes (Michel Lévy Frères, Paris), is that here quoted.

most essential points, so obviously, that to make it the basis of discussion would be one-sided and unfair. I propose, therefore, to treat the question independently, in so far as one who has no pretensions to Hebrew learning can deal with ascertainable fact on the basis of admitted law and underlying justice.

On a Thursday night in that month of March, the Thursday towards the end of the Passover Week, unquestionably took place the *arrest*—the first step before most modern trials. The question has been raised whether the arrest was legal. There is no reason to doubt that it was by authority of the High Priest; and the addition of a Roman *speira* to the officers of the temple must have been procured by Jewish authority. But was arrest before trial at all a lawful proceeding by Jewish law, no matter under how high an authority? It seems not to have been so, unless resistance or escape was apprehended. In this case no escape was intended, but resistance, though not intended, was possible, and the lawfulness of the mere arrest need not therefore be questioned. What is more important is what immediately followed the capture, for this raises the question whether, in the intention of the captors, the arrest at night-

fall was to be the preface to a regular trial. Had that been their intention, their legal course was plain. It was that followed a little later by the captors of Peter and John, who "put them in ward until the next day, because it was now eventide." It was to be otherwise here.

An *examination* by night followed the arrest. Jesus was first led by His armed escort to the presence of Annas, by far the most influential member of the Sanhedrin. For in that body there now sat no less than five of his sons, all of whom either had held, or were in a few years to hold, the supreme dignity of High Priest. The old man had exercised that great office twenty years before, and had, in the absence of the Roman governor,[1] stretched his powers, as one of his sons afterwards did, perhaps to the extent of carrying out capital sentences. At all events, the indignant Procurator had insisted on his removal from office; but though Annas gave a formal consent, he merely transferred the chair of the great Council to the younger members of his family.[2] It was now held by his energetic

[1] Valerius Gratus, Pilate's predecessor. See Josephus, *Antiq.* xviii. 2. 1, and xx. 9. 1.

[2] "Like flies on a sore," was the comment of the Emperor Tiberius on the rapid succession in which one high priest after another alighted upon Jerusalem during his reign.

son-in-law, Caiaphas, the aged head of the house remaining, in the estimation of orthodox Jews, the *de jure* High Priest. By Annas Jesus was sent bound to Caiaphas, perhaps only to another department of the sacerdotal palace. But before one or other of these princes of the Church the accused was certainly subjected to a preliminary investigation before any witnesses were called.

It is extremely difficult to decide whether this examination by "the High Priest," recorded by John alone, was made by Annas or by Caiaphas[1]—so difficult that it is fortunate that scarcely any legal question turns upon the point.[2] The chief result of our decision of it will be its bearing on the proceedings which followed, the same night. For if the examination detailed by John took place before Annas, it was separated by an interval of place, and also of time, from the subsequent proceedings before Caiaphas. In that case it is more probable that the examination of witnesses, the

[1] It depends partly on whether the word ἀπέστειλεν, in John xviii. 24, means "sent" or "had sent." See a full discussion of it in Andrew's *Life of our Lord.*

[2] Dupin objects that Annas was not a magistrate, and certainly that would add to the irregularity of interrogating the accused. But by Hebrew law the magistrate could not interrogate, while in France he does.

confession, and condemnation which took place before the younger and titular High Priest were somewhat later in the night, or even towards morning, and followed the form and order of a regular public trial. If, on the other hand, Annas at once sent on the prisoner to Caiaphas, and if the examination recorded was by the latter, it may have been immediately followed by the production of witnesses, and by the adjuration and condemnation; and in this case it is likely that a considerable interval succeeded these proceedings before a formal or public meeting of Council in the morning confirmed the informal condemnation of the night.

But the main point with regard to the High Priest's examination is independent of the question who the examiner was. It appears in any case to have been wholly illegal. In some countries—in France, for example, and in Scotland[1]—the accused is led before a magistrate, and subjected to private official interrogatories before he is remitted to his public trial. In others, and in the Hebrew law, it is not so. It

[1] In Scotland the additional anomaly has existed, that the private and official examination may afterwards (in the option of the prosecution) be produced against the accused at his public trial, while it cannot be then used in his favour (see *The Journal of Comparative Legislation* for March 1899).

was there the right of the accused to be free from all such private or personal investigation until he was brought for trial before his congregated brethren.[1] This rule of publicity seems to have been derived from principles both as to judges and witnesses. "Be not a sole judge," was one of the most famous aphorisms, "for there is no sole judge but One."[2] Still more clear was it, not from the Mishna only, but from the Pentateuch, that there was to be no such thing as a sole witness; and that the "two or three witnesses" at whose mouth every matter must be established must appear publicly to give their testimony.[3] Their deposition was the beginning of every proceeding; and until it was publicly given against a man, he was held to be in the judgment of law not merely innocent, but unaccused.

It is this principle which gives the fullest explanation of the answers of Jesus of Nazareth to the midnight questions of the High Priest. The ecclesiastical magistrate, probably sitting

[1] "Un principe perpétuellement reproduit dans les écritures hébraïques, résume déjà les deux conditions de publicité et de liberté. On ne soumettait pas l'homme accusé à des interrogatoires occultes, où dans son trouble l'innocent peut fournir des armes mortels contre lui" (Salvador's *Inst.* i. 366).

[2] Mishna, *Pirké Avoth*, iv. 8.

[3] Deut. xix. 15–18.

alone, and certainly sitting privately and during the night, and before as yet any witnesses were called, asked Jesus of His disciples and of His doctrine.

"Jesus answered him, I have spoken openly to the world; I ever taught in synagogues, and in the temple, whither the Jews always resort; and in secret have I said nothing.[1] *Why askest thou me? ask them that have heard me*, what I have said unto them: behold, they know what I said."

It was in every word the voice of pure Hebrew justice, founding upon the broad principle of their judicial procedure, and recalling an unjust judge to the first duty of his great office. But as one who studied that nation in older times observed, "When a vile man is exalted, the wicked walk on every side" around him; and when the accused had thus claimed his rights, one of the officers of court—a class

[1] These words recall a very curious provision of the Mishna (*De Synedriis*, vii. 10) as to the *Mesith*, or private "seductor—*i.e.* laicus seducens laicum"—a phrase which is, no doubt, translated in the Gospel words, "deceiver of the people." In the case of such a one, who says privately, "Let us go after other gods," the rule as to laying no snares for the accused was for once suspended. The person attempted to be seduced might profess to acquiesce, and so hide other witnesses to overhear the *Mesith*, and testify against him.

usually specially alive to the observance of form, and of that alone—"struck Jesus with the palm of his hand, saying, Answerest thou the High Priest so?" The reply of Jesus is exceedingly striking. In it He again resolutely took His stand on the platform of the legal rights of a Hebrew—a ground from which He afterwards rose to a higher, but which He certainly never abandoned: "If I have spoken evil, bear witness of the evil: but if well, why smitest thou me?"

The words are, no doubt, a protest for freedom of speech and liberty to the accused. But they appeal again to the same principle of the Hebrew law—that by which *witnesses* took upon themselves the whole burden and responsibility, and especially the whole initiative, of every accusation, even as they were obliged to appear at the close, and with their own hands to hurl the stones. And the renewed protest was so far effectual. For now the witnesses came forward, or, at least, they were summoned to bear their testimony; and only when they came forward can a formal trial, according to Hebrew law, be said to have commenced.

But did not all this take place by night? And was a trial by night legal?

On the question of fact whether the trial took place by night or in the morning, it will be found on turning back to their narratives that the four Evangelists give a confused account of what took place. Matthew and Mark, omitting the seemingly private interrogation of which we have already spoken, distinctly narrate a double and very striking trial by night—first by witnesses, and then by an attempt to obtain a confession; but all before the High Priest, the scribes, and the elders, to whom Mark adds, "all the chief priests." Their narrative reads as if the first part of this trial might have taken place almost as soon as the prisoner was brought from the Mount of Olives. At all events, in their narrative it took place by night, while in the morning there was a second and separate "consultation" of a similar, but seemingly larger and more authoritative, meetting.[1] John, on the other hand, narrates the interrogation by the High Priest, the transfer from Annas to Caiaphas, and the delivery to Pilate in the morning, but does not allude to any trial before the Council. These two repre-

[1] Bynæus (*De Morte Christi*) holds a twofold trial in the morning. But the view (recently repeated by Dr. Farrar) that Luke narrates a different scene from that given in nearly the same words by the early Evangelists is scarcely tenable.

sentations, though not contradictory, are unsatisfactory and inconsistent; and the tradition of Luke, which differs from both, completes the confusion, but helps us to a result. He omits the earlier part of the alleged trial—the interrogation of witnesses; but narrates the confession and condemnation as at one meeting of the Council, which took place "as soon as it was day," and after which the whole company led Him to Pilate.

Putting all these representations together, there is no difficulty in arriving at the order of the historical transactions, though there will always be insuperable difficulty to those who insist on the exact accuracy of the narrators on the one hand, or on the legal regularity of the proceedings on the other. The visit to Annas and the transfer to Caiaphas came first, with the interrogation of the accused by one or other of the High Priests. About this earlier hour certainly took place the denial of Peter, related by all the Evangelists, while some time must have been consumed in sending for witnesses, and summoning either the whole Council or some members. That the whole Council did not meet at night is unquestionable: that a certain number of them were present by

night with Caiaphas is equally clear. Assuming that there was a final and formal meeting of the whole Sanhedrin at its usual morning hour, it is barely possible that the vivid scene of the adjuration, confession, and sentence took place before it. But it is much more likely on the evidence that it took place earlier, when a considerable number, quite enough to be popularly called a Council, were already assembled. And, in any case, it is certain that there was a still earlier transaction—the examination of witnesses and the deliberation on their evidence—and that this must have taken place some time during the night. It will always remain doubtful whether this midnight testimony took place before a considerable meeting of the Council or its committee on the one hand, or before Caiaphas and a few of his friends on the other. Nor is it of much consequence. The confusion of representation is quite natural. For, according to all the rules of Hebrew law, such a transaction in the night was absolutely illegal, incapable of being validly transacted in either form, and incapable of being reported so as to produce an impression of justice upon the minds of the people.

The detailed law is laid down in a passage

of the Mishna,[1] which contrasts capital trials with questions of money. It is so striking that the whole paragraph may be quoted, though it is with the concluding words that we have now to deal:—

"Money trials and trials for life have the same rules of inquiry and investigation. But they differ in procedure, in the following points:—The former require only three, the latter three-and-twenty judges. In the former it matters not on which side the judges speak who give the first opinions: in the latter, those who are in favour of acquittal must speak first. In the former, a majority of one is always enough: in the latter, a majority of one is enough to acquit, but it requires a majority of two to condemn. In the former, a decision may be quashed on review (for error), no matter which way it has gone: in the latter, a condemnation may be quashed, but not an acquittal. In the former, disciples of the law present in the court may speak (as assessors) on either side: in the latter, they may speak in favour of the accused, but not against him. In the former, a judge who has indicated his opinion, no matter on which side, may change his mind: in the latter, he who has given his voice for guilt may change his mind, but not he who has given his voice for acquittal. *The former (money trials) are commenced only in the daytime, but may be concluded after nightfall: the latter (capital trials) are commenced only in the daytime, and must also be concluded during the day. The former may be concluded by acquittal or condemnation on the day on which they have begun: the latter may be concluded on that day if there is a sentence of acquittal, but must be postponed to a second day if there is to be a condemna-*

[1] Mishna, *De Synedriis*, iv. 1.

tion. And for this reason capital trials are not held on the day before a Sabbath or a feast-day."

The crucifixion of Jesus took place, as has scarcely ever been doubted, on the Friday, the day before a Sabbath which was also "an high day"; and this meeting of the Council took place on the same Friday morning.[1] Such a meeting on such a day was forbidden. If indeed it only met to register an acquittal, it was lawful. But if the court was unable at once to acquit, it was bound to adjourn for at least twelve hours before meeting for final judgment, and such a final meeting could not be on the Sabbath. The necessity of the adjournment of a capital trial to secure the rights of the accused is shown very clearly by the detailed regulations of the Mishna[2]:—

"If a man is found innocent, the court absolves him. But if not, his judgment is put off to the following day. Meantime the judges meet together, and, eating little meat, and drinking no wine during that whole day, they confer

[1] We thus escape, in our present investigation, the extremely difficult and famous questions whether the Friday was the 14th or 15th Nisan, and on which day of that week the Passover was eaten. If the Friday was the 15th, it was the Passover or Feast-day, when it seems to have been unlawful to judge at all. Mishna, *Moed Katon*, v. 2.

[2] Mishna, *De Synedriis*, v. 5, and vi. 1.

upon the cause.[1] On the following morning they return into court" and vote over again, with the like precautions as before. . . . "If judgment is at last pronounced, they bring out the man sentenced, to stone him. The place of punishment is to be apart from the place of judgment (for it is said in Leviticus xxiv. 14, 'Bring the blasphemer without the camp'). In the meantime an officer is to stand at the door of the court with a handkerchief in his hand; another, mounted on horseback, follows the procession so far, but halts at the farthest point where he can see the man with the handkerchief. [The judges remain sitting], and if anyone offers himself to prove that the condemned man is innocent, he at the door waves the handkerchief, and the horseman instantly gallops after the condemned and recalls him for his defence."[2]

These regulations, taken not from the commentary on the oral law, but from the Mishna itself, may have existed in full detail during the high-priesthood of Caiaphas. There is no reason to doubt that at least the general rule, which prescribes adjourning the trial from daylight to daylight, bound the judges of Jesus of Nazareth. In no case was such a rule so absolutely necessary to justice, as where the accused, arrested after nightfall, had been put upon his trial by daybreak,

[1] "Beatus judex qui *fermentat* judicium suum" (*Gemara on Mishna, De Synedriis*, c. 1).

[2] A striking commentary on this graphic law will occur to English readers who remember the interposition of Daniel in the History of Susanna, verses 46, 49.

without the least opportunity of summoning witnesses for his defence. But what the Gemara describes as the *atrocity* of thus anticipating the day of death of the accused,[1] was exceeded in open injustice by the earlier outrage of commencing, and probably substantially concluding, the real trial under cloud of night. That would have been an intolerable scandal even in the case of an ordinary civil suit. Such a suit could only be called and commenced during the day, though upon occasion it might be prolonged after the shadows had fallen until a verdict were returned.[2] But a grave criminal case—certainly a capital case of crime—was always to be begun, and resumed or continued, and finished, only in the light of day. And that, of all criminal cases, a trial in which a son of Israel, acknowledged to be mighty in deed and word before all the people, was to be judged for his life — that such a trial should be begun and finished and sentence formally pronounced, between midnight and morning, was a violence done to

[1] "Proferre diem morti damnati nefas est" (Mishna, *De Synedriis*, iv. 1. Note 8, by Cocceius).

[2] Even this is forbidden by another text in the treatise *Nidah*, and the jurists have had to settle the question of their relative authority.

the forms and rules of Hebrew law as well as to the principles of justice.[1]

Yet there can be no doubt that at some untimely hour, between Thursday night and Friday morning, the form, and somewhat more than the form, of a trial by Hebrew law did take place. The judges, unjust as they were, were men trained in that law of minute scruples and mighty sanctions; and we may be sure that they would have felt it impossible to dispense with process and form altogether. The last words we caught from Jesus were His demand for open accusation and trial: "Why askest thou me? ask them which heard me." And we shall hear no further utterance until the close. For when this demand for public justice was met by a nocturnal trial, the accused declined to take part in it. Meantime much was going on. The members of the Council present sought for witness against Jesus. Matthew says they

[1] The circumstance that this huge blot is ignored by Salvador makes it very unnecessary to notice in detail his defence of other parts of the supposed formal judicial proceeding. He narrates the trial and condemnation as taking place before a full meeting of the Sanhedrin, and adds (vol. i. 391): "Le conseil se rassembla de nouveau dans la matinée du lendemain *ou du surlendemain*, comme la jurisprudence l'exigeait, pour confirmer la sentence ou l'annuler." This is mere invention of the facts.

sought for false witness. But even the former was a scandalous indecorum. Hebrew judges, as we have seen, were eminently counsel for the accused. And one of the strangest sights the world has ever seen must have been the adjuration or solemn address to the witnesses who came to speak against the life of Jesus, by the magistrate who had — no doubt with perfect sincerity — held it expedient that one man should die for the people. In our Courts an oath means a solemn undertaking by the witness, in the presence of God and the magistrate, to tell the truth. In the Hebrew Courts it was an adjuration by the magistrate of the witness as standing in God's presence. That form of adjuration or solemn appeal still exists in the body of the law.[1] It was the duty of the High Priest to pronounce it to each witness in a capital case, and so to put them on oath. Who can measure the force of its utterance on this occasion by the sacred Judge of Israel upon the men who, while words such as these uttered, were forced to gaze into the face of Him whose life it guarded?

[1] Mishna, *De Synedriis*, iv. 5. "Intro vocatis terrorem incutiunt testibus" (ii. 6).

"Forget not, O witness, that it is one thing to give evidence in a trial as to money, and another in a trial for life. In a money suit, if thy witness-bearing shall do wrong, money may repair that wrong. But in this trial for life, if thou sinnest, the blood of the accused, and the blood of his seed to the end of time, shall be imputed unto thee. . . . Therefore was Adam created one man and alone, to teach thee, that if any witness shall destroy one soul out of Israel, he is held by the Scripture to be as if he had destroyed the world; and he who saves one such soul to be as if he had saved the world. . . . For a man, from one signet-ring, may strike off many impressions, and all of them shall be exactly alike. But He, the King of the kings of kings, He the Holy and the Blessed, has struck off from His type of the first man the forms of all men that shall live; yet so, that no one human being is wholly alike to any other. Wherefore let us think and believe that the whole world is created for a man [such as he whose life hangs on thy words]."

The Son of Man, whose life was surrounded by the law with this tremendous sanction, stood silent before those witnesses; and, whatever was the reason, the narrative records that their testimony against him failed. Let us therefore refer now to the Hebrew law of evidence. The Talmud divides all oral evidence into—

1. A vain testimony.
2. A standing testimony.
3. An "equal" or adequate testimony; or

(perhaps) the testimony of them that agree together [1] (ἰση μαρτυρια).

The evidence of the earlier witnesses who on that night were examined seems to have been set aside as belonging to the first class; for a "vain testimony" was not even accepted provisionally—was not retained until afterwards confirmed. A "standing testimony," on the other hand, was admitted in the meantime and provisionally, but not held valid until confirmed by others. To this intermediate rank attained the evidence of that witness who at length came forward to speak to the early utterance of Jesus about the destruction and rebuilding of the temple. And when following him another came, the question was at once raised whether the testimony of both did not amount to the third and complete order of evidence, known as "the testimony of them that agree together." "But not even so," says Mark, using the exact technical term—"not even so did their witness agree together." [2] This may undoubtedly have been

[1] Mishna, *De Synedriis*, v. 3, 4. And see Lightfoot's *Hor. Heb.*, Mark xiv. 56.

[2] Unless Mark, when he says their testimonies were οὐκ ἴσαι, means that they were not "adequate," rather than not "accordant."

a mere discrepancy in their narration of facts. That discrepancy cannot have been great, according to our modern ideas. For Mark gives the evidence of both in one indiscriminating sentence. And Matthew does the same in another sentence, slightly different. Neither of them makes any explicit distinction between what the two witnesses said. Let us suppose that the discrepancy between the two (alleged by Mark) amounted only to this, that the one said, in Matthew's phrase, "I am able to destroy the temple of God," and the other, "I *will* destroy this temple." It is by no means clear that even such a difference as this might not have been sufficient to nullify their testimony. For in a Hebrew criminal trial "the least discordance between the evidence of the witnesses was held to destroy its value";[1] and this rule, like others, was pushed to that childish extreme which we now call Judaical. A mere verbal distinction may have sometimes been a fatal objection in the mind of even such a judge as Caiaphas. But the evidence of men who are not reported to have said anything extreme against the accused, but whom the Evangelists, departing from their

[1] Salvador's *Institutions*, i. 373.

usual reserve, distinctly call "false witnesses,"[1] was probably reckless and inaccurate, and so discordant upon the face of it. It is just possible, indeed, that the variation between the reports of the two Evangelists covers not a mere verbal distinction, but a substantial and serious difficulty, of great importance for the conduct of the case.

For at this point we are confronted by one of the most important questions in the whole inquiry, What was the crime for which Jesus was all this time being tried? What was the charge, what the indictment, upon which He stood before the Council? Up to this point we have had no intimation on that subject. In modern times that would be an extraordinary state of matters. To try a man, especially for his life, without specifying beforehand the crime on which he is to be tried, is justly held to be an outrage. Some of the greatest events in English constitutional history turn on the illegality of "general warrants"—the illegality, that is, *not* of trying a man without specifying his crime—the most arbitrary of our kings did not venture

[1] There were gradations among false witnesses as among true —especially as they were consciously or unconsciously false. See Lightfoot on the Talmudic and technical meaning of the word, *Hor. Heb.*, on Matt. xxvi. 60.

to do that—but of even committing him for trial, without specifying his accusation in the warrant of committal. But we must not judge Jewish law, or indeed early law of any nation, by our modern rules. Hebrew law, as we have seen, gave a peculiarly important position to the witnesses. I believe we shall not fully realize that position unless we remember that, at least in the earlier days of that law, the *evidence of the leading witnesses constituted the charge.* There was no other charge: no more formal indictment. Until they spoke, and spoke in the public assembly, the prisoner was scarcely an accused man. When they spoke, and the evidence of the two agreed together, it formed the legal charge, libel, or indictment, as well as the evidence for its truth. This, to us paradoxical, but really simple and natural origin of a Hebrew criminal process, is nowhere better illustrated than in that ancient *cause célèbre* of Naboth the Jezreelite.

"They proclaimed a fast, and set Naboth on high among the people. And there came in two men, children of Belial, and sat before him; and the men of Belial witnessed against him, even against Naboth, in the presence of the people, saying, Naboth did blaspheme God and the

king. Then they carried him forth out of the city, and stoned him with stones, that he died."

The essential points of a Hebrew trial for life are here given with admirable terseness.[1] But in the case of Naboth the false witnesses suborned by the Sidonian queen are represented as using the technical word, or *nomen juris*, of blasphemy. In the trial of Jesus the only witnesses distinctly spoken to reported a particular utterance of the accused. What crime was this utterance intended by the accusers, or the judges, to infer?

There are two distinct meanings which may have been *innuendoed*. According to one of them, the words, "I will destroy this temple that is made with hands, and within three days I will build another made without hands," may have been represented as the voice of one come to attack the existing institutions—to "destroy the law and the prophets." We have a most important commentary on this in the parallel accusation of Stephen a few months later: "We have heard him say, that this Jesus of Nazareth shall destroy this place, and shall *change the customs* which Moses delivered us." But, accord-

[1] See also Josephus' account of the trial of Zacharias the son of Baruch: *De Bello Judaico*, iv. 5, 4.

ing to another view, the same reported utterance —especially in the modified form of Matthew, "I am *able* to destroy the temple of God"— may have been intended as a charge of arrogating superhuman power. So His original auditors felt it. "Forty-and-six years was this temple in building, and wilt thou rear it again in three days?" The two charges, it will be observed, though very distinct, are not inconsistent. May He not have been charged *both* with attempting to change the national institutions and with pretensions to miraculous power?

The difficulty in this twofold supposition is that we have been seeking in these charges for the *one* crime upon which Jesus was finally condemned. But if we look more narrowly at the supposed difficulty, we may find what we have been seeking. Jesus was finally condemned for "blasphemy," because He made Himself the Messiah and the Son of God, making thus higher personal claims than even the witnesses against Him had suggested. That was the crime, therefore, towards which one of the intended accusations—that as to superhuman power—may be held to have pointed. But what of the other, the attack upon Jewish institutions? The unexpected but satisfactory answer

is, that such a charge may have fallen under precisely the same legal category, or *nomen juris*—that of blasphemy. This might be suggested to us even by the witnesses against Stephen, who describe as "blasphemous words" the deliberate utterances of the deacon as to the passing away of the holy place and the law. But I believe that it will be found there is no Hebrew category of crime under which the attempt to supersede the old institutions could so naturally come, as that which is here denoted by the term blasphemy. The witnesses, therefore, may have had this accusation somewhat in view from the beginning. The judges almost certainly had. And it is not too soon to devote a few sentences to the question what a legal word so important for our inquiry properly includes.

Blasphemy is not mere profanity. It is profanity which, as the name imports, *strikes* directly against God.[1] This is the original sense of the word, and it is that to which we have returned in modern days. But throughout the countries of Europe ruled by civil and canon law, blasphemy has long since taken on a

[1] The Hebrew phrase נָקַב שֵׁם יְהוָה seems to carry the same implication of offence and insult.

secondary and constructive meaning. It stands in their law-books at the head of the enumeration of crimes as "Treason against the Deity," taking precedence even of treason against the State. And this *crimen læsæ majestatis divinæ*, like the crime of treason against earthly rulers, has often, under the head of constructive treason, taken great and dangerous latitude.[1] Now whether it is a necessary thing for ordinary nations and jurisprudences to have in their statute-book such a crime as treason against God at all, we need not inquire. One thing is certain. In the Hebrew commonwealth and under Hebrew law it was necessary. For that commonwealth was in theory a pure theocracy, and all its priests, prophets, judges, and kings were then held to have been the mere courtiers and ministers of the invisible King, whose word was Israel's constitution and law. In such a constitution, blasphemy, or the verbal renunciation of God, was in the proper sense high treason; and any attempt to subvert the great institutions of His government was constructive treason. By what name was such constructive treason

[1] The canon law definition of blasphemy puts its original meaning last, and puts first that it is ascribing to God "*quod Illi non convenit.*"

known and tried? I think it was probably blasphemy. Neither the crime of the "false prophet" of the true God, nor that of "the idolater" or seducer to the worship of strange gods, seems to have attained to the generality and eminence of the word Blasphemy in Jewish law. That some such word was used in the age of Caiaphas to designate constructive treasons—attempts against the Divine system of religion—is certain. That it had become the proper *nomen juris* for all such attempts I have not seen conclusively proved; but it seems highly probable.

We cannot therefore hold, as has sometimes been done, that these witnesses brought forward a special and isolated charge with regard to the temple, and that on the failure of it the Council passed unfairly to other and disconnected counts. The special charge was at least in the line of the whole procedure contemplated.[1] For unless we are to become wholly unhistorical in our legal criticism, we must believe that the general course of this night's proceedings was prearranged by the leading members of the Sanhedrin, and that they, and not the witnesses, really con-

[1] Exactly as the charge against Stephen was in the line of his subsequent and sudden condemnation.

ducted the prosecution. The evidence is overwhelming[1] that at repeated meetings of what the Fourth Gospel even calls a Council, and what may have been formal meetings of the acting committee of that body, the suppression, and if need be the death, of Jesus had been previously resolved upon. And in these preliminary proceedings it was not merely His acts as a prophet or as an opposer of existing institutions that were deliberated upon. His claim to be the Christ, and even (as his nearer followers had already acknowledged Him to be) the Son of God—whatever that mysterious claim might mean—had during the second part of His career[2] pressed heavily upon the Hebrew conscience, especially in Jerusalem. The decision alleged in the Fourth Gospel, "That if any man did confess that he was the Christ, he should be put out of the synagogue," does not indeed formally negative that claim. It may only, as Neander holds, have reserved it for the judgment of the one competent tribunal, the great Council of the nation; while it forbade all private persons, whatever their individual views,

[1] John vii. 25, 30, 45, viii. 40, ix. 22, xi. 47, 57; Matt. xxi. 23, 46; Luke xx. 20; Matt. xxvi. 3 *et seq.*

[2] Too little studied in the ablest popular treatises of this century, *e.g.* in both Renan's *Jesus* and *Ecce Homo.*

from in the meantime publicly anticipating the solemn verdict. But it combines with innumerable other parts of the history to show the agitating questions which pressed on the minds of the judges as they listened to witness after witness in that early dawn.

The evidence, all agree, was not found sufficient—perhaps not found "relevant"[1]—so as to infer a conviction upon it alone. The rule of law in such a case was clear, that the accused must be at once liberated. It was not done. And even had the inculpatory evidence been found sufficient, the next step, according to the rules of the court, was to call witnesses for the defence.[2] Such a proposal would of course have been a mockery in a trial at such an hour. But even that was not done. What was actually done was an attempt to cross-examine the accused. "Answerest thou nothing? What is it which these witness against thee?" are the exact words of the High Priest repeated in two of the narratives. But He "held his peace, and answered nothing." The interrogation, too, was unlawful. But I am not able to represent this

[1] Which of these is the meaning of the Hebrew word translated *ἰση μαρτυρια*—an *even* testimony?

[2] There seems to have been no advocate for the defence, known as *Baal-rib*, or Dominus Litis.—Friedlieb, *Archæol.* 87.

silence as caused by indignation at the errors of the accusers, or the unfairness of the judges. That the ordinary rights of every accused Hebrew had been present to the mind of Jesus we have already seen. But that He had any expectation of escaping, or even any desire at this stage to do so, there is no evidence whatever. All the narratives combine to show that He had for some time been consciously moving on to a tragical and tremendous close of His brief career. His utterances in anticipation of it during the previous weeks, and especially on the preceding day, have held the world spell-bound in each succeeding generation. A similar height of self-possession marks Him at this final hour. The inaccurate or malicious recollections of what He had said three years or three weeks before were nothing now to Him. He had not come to Jerusalem to perish by a mistake; and if we are to fill that silence with thoughts at all, we may suppose that they had reference to the scene that now surrounded Him. For there, at last, were gathered before Him the children of the House of Israel, represented in their supreme Council and great assembly. To this people He had always held Himself sent and commissioned. Now at last they have met; and

all the ages of Israel's past rise in the mind of Him who stands to be judged—or to judge.

At what hour the great concluding scene, so vividly described by three of the Evangelists, took place, it is impossible to say.[1] Plainly enough, the private and public examinations of the witnesses must have occupied a considerable time, and whether or not these had been attended by "all the Council," or a portion of its members, it is quite certain that by this time —at the point where these examinations were discontinued—a large number of the "great Sanhedrin" was met. The members of that body numbered seventy-one; the "little Sanhedrin," which was probably a committee or cabinet formed out of the larger, numbered only twenty-three.[2] It is very possible that the smaller body may have been summoned at a somewhat earlier hour by Caiaphas, and it may be that no other ever assembled. Still the

[1] "They say their phylacteries," says the Talmud (Berachoth, i. 2), "from the first daylight to the third hour," at which last time the "Lesser Sanhedrin" could meet, while the greater sat only "after the daily morning sacrifice" (*Maimonides on ch. De Synedriis*, iii.). Luke seems to fix the first daylight as the time when they actually did "lead him into their council"—the Arraignment.

[2] Mishna, *De Synedriis*, i. 6. The quorum of the Sanhedrin was twenty-three.

narratives rather suggest that the great Council, which alone could at this time try a man for his life, and which alone could at any time judge a prophet,[1] was also called. Let us concede to the language of the Evangelists that so much of the law was properly observed. We must, in that case, imagine the Council as sitting in the hall Gazith, half within and half without the holy place.[2] The seats were placed in a circle, and half of the seventy sat on the right and half on the left of the President or *Nasi*, who on this occasion was the High Priest Caiaphas. At his one hand sat the "Father of the Court," at the other the "Sage." Two scribes waited at the table to record the sentence; two officers guarded the prisoner, who stood in front of the President. Among the semicircular crowd of judges, Caiaphas and his friends, highest in rank and in Roman favour, represented also the great Sadducean element. The Sadducees, as rationalists, had no particular enmity to Jesus, over and above their general distaste for the introduction of the Divine as an element in human affairs. But, as the aristocratic and official party, they

[1] "Tribus, pseudo-propheta, sacerdos magnus, non nisi a septuaginta et unius judicum consessu judicantur" (Mishna, *De Synedriis*, i. 5).

[2] But see Lightfoot and others.

were most keenly alive to the disorganisation which that element often produces, and were always disposed to suppress it before it had got to a dangerous length. The previous appeal of the High Priest to the *salus populi* as overriding all individual claims of right—"Ye know nothing at all, nor consider that it is expedient for us that one man die for the people, and that the whole nation perish not"—was one full of reason. His plan seems to have been founded on a just and sound view of the temper of his own nation and of the Roman authorities,—a clear-sighted and comprehensive view, omitting no element that ought to be taken into account, *except* the existence of God and His nearness to men. But in the working out of that plan a certain exasperation must by this time have mingled with the calm determination to get rid of a saintly fellow-citizen. The Pharisees, on the other hand, were an equally large part of the Council, and their patriotic and religious feelings had originally been far more appealed to by the preaching of Jesus. But the inward struggle which had preceded their rejection of His claims had caused that rejection to be followed, according to the ordinary laws of human nature, by a growing hostility, which by this time was almost hatred.

It was they, the zealots of the Council, who no doubt took the initiative in the extraordinary and tumultuous scene which closed the sitting. During the later examination of witnesses Jesus had been silent; but the thought of His Messianic or Divine claim pressed upon His judges with overwhelming force, and broke out at last into passionate utterance. The discrepancy between the Evangelists here merely reveals to us all the actors in the scene. "Art thou the Christ? tell us," they cried; and the irrepressible exclamations of the judicial crowd described in one Gospel were only put an end to by the solemn adjuration of their President, recorded in another. To the eager and hostile questions of the Council, Jesus answered at first in a twofold utterance: "If I tell you, ye will not believe." Was He thinking sadly of their forgotten duty to weigh His word, and of a result to Himself, or to them? But He adds, "And if I also ask you," as He had done perhaps only a few days before in the temple, when they had demanded His authority, "if I, instead, put my questions to you, ye will not answer me," and ye will not release your prisoner. It was true; but the Council was long past being turned from its purpose by the reference

which these words again have, as I think, to judicial fairness and the order of justice. They saw in His face the light of that more than earthly claim which His lips only for a few moments delayed to make; and with a mixture of terrible and hateful emotions, starting to their feet, then said they all, "Art thou then the Son of God?" But above that crowd of aged and angry faces was now seen rising the High Priest of Israel, and all voices sunk away as the chief magistrate and judge of the sacred nation demanded, in the name of God whose office he bore, an answer to his most solemn adjuration, "I adjure thee by the living God, that thou tell us whether thou be the Christ, the Son of the Blessed!" It was the question for which men had waited so long; and now the answer came. "I am," the Christ, the Son of God; and, turning to the crowd who sat in their places of power around him, he added, "Hereafter shall *ye* see the Son of man sitting on the right hand of power, and coming in the clouds of heaven." It was the critical moment for the elect people. When a king declared himself in Israel, the manner was that he stood in the temple by a pillar, and the people of the land receiving him rejoiced with hosanna and song,

with palm-branch and with trumpet. And if this was the manner of a king, how should the King-Messiah be received when He claimed to be the Son of the Highest? But when a man blasphemed the name of God, the ordinance in Israel was that everyone who heard it should rend his garment from the top downwards—rend it into two parts which might again never be sewn into one. And scarcely had Jesus witnessed His confession before those many witnesses, when the High Priest, standing in his place, rent his clothes, saying, "He hath spoken blasphemy; what further need have we of witnesses? Behold, now ye have heard his blasphemy. What think ye?" And they answered and said, "He is ISH MAVETH—a man of death." . . . "Then they all condemned him to be worthy of death."

So passed that great condemnation.

There are very few points with regard to it which remain to be noticed. One relates to the lawfulness of the High Priest's adjuration, and to the judicial use of the confession of the accused.[1] Nothing can be clearer than the

[1] The adjuration was of course equivalent to putting the accused upon oath, and indeed seems to have been the usual way in which that was done. See Selden's chapter "De Juramentis" in his book on Sanhedrins, and the other treatises on the same subject in vol. xxvi. of Ugolinus' *Thesaurus*.

Talmudists on this. "Our law," says Maimonides, "condemns no one to death upon his own confession." "It is a fundamental principle with us," says Bartenora, "that no one can damage himself by what he says in judgment."[1] Putting the question to the accused, and founding a condemnation on his answer, was therefore the last violation of formal justice.

But what as to its substance? The question had been put, and the answer had been given. Assuming that the claim thus made by Jesus had come in some lawful form before the Sanhedrin, were they shut up to this condemnation? In answering this we have first to remember the distinctions already taken between blasphemy, in its simple meaning of profanity or insult to God, and blasphemy as equivalent to treason, overt or constructive, against the theocracy. In the former sense there was no case here. The words of the great accused were full of filial reverence for the Father.[2] We have therefore to go on to the latter sense, and to face the

[1] Mishna, *De Synedriis*, vi. 2, note. So Cocceius: "Ita tenent Magistri, neminem ex propria confessione aut prophetæ vaticinio esse neci dandum." And even Salvador: "Notre loi ne condamne jamais sur le simple aveu de l'accusé."

[2] Of blasphemy in this proper sense, the cautious rule of the Mishna must be understood: "Nemo tenetur blasphemus, nisi expressit nomen" (*De Synedriis*, vii. 5).

grave question, Was it high treason in a Jew to claim to be the Messias, the Son of God? Most certainly it was—*unless it was true.* And if blasphemy was the proper word by which to designate so tremendously audacious a claim, then was such a false claim also blasphemous. But what if it were true? In such a case the falsehood was of the essence of the crime, and had to be proved or assumed before the judicial conclusion could be reached. The mere claim to be the Messiah was no crime. "Art thou the Christ?" was asked continually, of John, of Jesus, of every reformer, and of every prophet; though an answer in the affirmative was held to be the most daring claim that human lips could frame. What relation indeed the Messiah of the Jews was supposed to have to their unseen King, and how far the dignity, not unknown to that age, of "Son of God," could freely be applied to the expected Christ, are questions on which vast learning has been expended. We shall equally err if we suppose that these words had in their ears all the meaning with which subsequent theology has invested them, or if we forget that the purpose and bearing of the accused gave them, on this last as on previous occasions, a unique and Divine significance. But the two-

fold claim of the Messiahship and the Sonship— made seemingly in response to the grouping of the two ideas (Art thou "the Christ, the Son of God?") by the High Priest himself — could never release a Hebrew tribunal from the duty of weighing a claim to Messiahship. The proper response of an unbelieving judge, like Caiaphas, when his adjuration was answered by confession, was, "What sign shewest thou then, that we may see and believe thee?" And when, instead, he rent his clothes, with the words, "What need ye further witnesses?" it was either the preconcerted plan by which to terminate the whole semblance of judicial procedure, or, perhaps, a sudden inspiration of evil, spoken a second time not wholly of himself, in a moment when the cold, hard, cruel thoughts, which had so long smouldered in the unjust judge, blazed up at the touch of confronting Righteousness into final and murderous paroxysm.

We pass next to the Roman tribunal. But our conclusion on the question of Hebrew law must be this: that a process begun, continued, and apparently finished, in the course of one night; commencing with witnesses against the accused who were sought for by the judges, but whose evidence was not sustained even by

them; continued by interrogatories which Hebrew law does not sanction, and ending with a demand for confession which its doctors expressly forbid; all followed, twenty-four hours too soon, by a sentence which described a claim to be the Fulfiller of the hopes of Israel as blasphemy,—that such a process had neither the form nor the fairness of a judicial trial. But though it wanted judicial fairness and form, it may nevertheless have been a real and important transaction. There is no reason to think that the Council missed the fact that Jesus claimed to be their King, though they deeply misunderstood the nature of His kingdom. And there is every reason to believe that their condemnation truly expressed the rejection of His claim by the nation itself.

TIBERIUS AS PONTIFEX MAXIMUS.

(Found at Capri.)

THE ROMAN TRIAL

Christus, Tiberio imperitante, per procuratorem Pontium Pilatum supplicio affectus est.

Tacitus.

Οὗτοι πάντες ἀπέναντι τῶν δογμάτων Καίσαρος πράττουσι, βασιλέα λέγοντες ἕτερον εἶναι, Ἰησοῦν.

Luke.

THE FOUR NARRATIVES.

MATTHEW

Now when morning was come, all the chief priests and the elders of the people took counsel against Jesus to put him to death: and they bound him, and led him away, and delivered him up to Pilate the governor. . . . Now Jesus stood before the governor: and the governor asked him, saying, Art thou the King of the Jews? And Jesus said unto him, Thou sayest. And when he was accused of the chief priests and elders, he answered nothing. Then said Pilate unto him, Hearest thou not how many things they witness against thee? And he gave him no answer, not even to one word; insomuch that the governor marvelled greatly. Now at the feast the governor was wont to release unto the multitude one prisoner, whom they would. And they had then a notable prisoner, called Barabbas. When therefore they were gathered together, Pilate said unto them, Whom will ye that I release unto you? Barabbas, or Jesus, which is called Christ? For he knew that for envy they had delivered him up. And while he was sitting on the judgment-seat, his wife sent unto him, saying, Have thou nothing to do with that righteous man: for I have suffered many things this day in a dream because of him. Now the chief priests and the elders per-

MARK

And straightway in the morning the chief priests with the elders and scribes, and the whole council, held a consultation, and bound Jesus, and carried him away, and delivered him up to Pilate. And Pilate asked him, Art thou the King of the Jews? And he answering saith unto him, Thou sayest. And the chief priests accused him of many things. And Pilate again asked him, saying, Answerest thou nothing? behold how many things they accuse thee of. But Jesus no more answered anything; insomuch that Pilate marvelled. Now at the feast he used to release unto them one prisoner, whom they asked of him. And there was one called Barabbas, *lying* bound with them that had made insurrection, men who in the insurrection had committed murder. And the multitude went up and began to ask him to *do* as he was wont to do unto them. And Pilate answered them, saying, Will ye that I release unto you the King of the Jews? For he perceived that for envy the chief priests had delivered him up. But the chief priests stirred up the multitude, that he should rather release Barabbas unto them. And Pilate again answered and said unto them, What then shall I do unto him whom ye call the King of the Jews? And they cried out again, Crucify him.

THE FOUR NARRATIVES.

LUKE

And the whole company of them rose up and brought him before Pilate. And they began to accuse him, saying, We found this man perverting our nation, and forbidding to give tribute to Cæsar, and saying that he himself is Christ a King. And Pilate asked him, saying, Art thou the King of the Jews? And he answered him and said, Thou sayest. And Pilate said unto the chief priests and the multitudes, I find no fault in this man. But they were the more urgent, saying, He stirreth up the people, teaching throughout all Judæa, and beginning from Galilee even unto this place. But when Pilate heard it, he asked whether the man were a Galilæan. And when he knew that he was of Herod's jurisdiction, he sent him unto Herod, who himself also was at Jerusalem in these days. Now when Herod saw Jesus, he was exceeding glad: for he was of a long time desirous to see him, because he had heard concerning him; and he hoped to see some miracle done by him. And he questioned him in many words; but he answered him nothing. And the chief priests and the scribes stood, vehemently accusing him. And Herod with his soldiers set him at nought, and mocked him, and arraying him in gorgeous apparel, sent him back to Pilate. And Herod and

JOHN

They lead Jesus therefore from Caiaphas into the palace: and it was early; and they themselves entered not into the palace, that they might not be defiled, but might eat the passover. Pilate therefore went out unto them, and saith, What accusation bring ye against this man? They answered and said unto him, If this man were not an evil-doer, we should not have delivered him up unto thee. Pilate therefore said unto them, Take him yourselves, and judge him according to your law. The Jews said unto him, It is not lawful for us to put any man to death: that the word of Jesus might be fulfilled, which he spake, signifying what manner of death he should die. Pilate therefore entered again into the palace, and called Jesus, and said unto him, Art thou the King of the Jews? Jesus answered, Sayest thou this of thyself, or did others tell it thee concerning me? Pilate answered, Am I a Jew? Thine own nation and the chief priests delivered thee unto me: what hast thou done? Jesus answered, My kingdom is not of this world: if my kingdom were of this world, then would my servants fight, that I should not be delivered to the Jews: but now is my kingdom not from hence. Pilate therefore said unto him, Art thou a king then? Jesus answered, Thou sayest that I

THE FOUR NARRATIVES.

MATTHEW

suaded the multitude that they should ask for Barabbas, and destroy Jesus. But the governor answered and said unto them, Whether of the twain will ye that I release unto you? And they said, Barabbas. Pilate saith unto them, What then shall I do unto Jesus which is called Christ? They all say, Let him be crucified. And he said, Why, what evil hath he done? But they cried out exceedingly, saying, Let him be crucified. So when Pilate saw that he prevailed nothing, but rather that a tumult was arising, he took water, and washed his hands before the multitude, saying, I am innocent of the blood of this righteous man: see ye *to it*. And all the people answered and said, His blood *be* on us, and on our children. Then released he unto them Barabbas: but Jesus he scourged and delivered to be crucified.

MARK

And Pilate said unto them, Why, what evil hath he done? But they cried out exceedingly, Crucify him. And Pilate, wishing to content the multitude, released unto them Barabbas, and delivered Jesus, when he had scourged him, to be crucified.

THE FOUR NARRATIVES.

LUKE

Pilate became friends with each other that very day; for before they were at enmity between themselves. And Pilate called together the chief priests and the rulers and the people, and said unto them, Ye brought unto me this man, as one that perverteth the people: and behold, I, having examined him before you, found no fault in this man touching those things whereof ye accuse him: no, nor yet Herod: for he sent him back unto us; and behold, nothing worthy of death hath been done by him. I will therefore chastise him, and release him. But they cried out all together, saying, Away with this man, and release unto us Barabbas: one who for a certain insurrection made in the city, and for murder, was cast into prison. And Pilate spake unto them again, desiring to release Jesus. But they shouted, saying, Crucify, crucify him. And he said unto them the third time, Why, what evil hath this man done? I have found no cause of death in him: I will therefore chastise him and release him. But they were instant with loud voices, asking that he might be crucified. And their voices prevailed. And Pilate gave sentence that what they asked for should be done.

JOHN

am a king. To this end have I been born, and to this end am I come into the world, that I should bear witness unto the truth. Every one that is of the truth heareth my voice. Pilate saith unto him, What is truth? And when he had said this, he went out again unto the Jews, and saith unto them, I find no crime in him. But ye have a custom, that I should release unto you one at the passover: will ye therefore that I release unto you the King of the Jews? They cried out therefore again, saying, Not this man, but Barabbas. Now Barabbas was a robber. Then Pilate therefore took Jesus, and scourged him. And the soldiers plaited a crown of thorns, and put it on his head, and arrayed him in a purple garment; and they came unto him, and said, Hail, King of the Jews! and they struck him with their hands. And Pilate went out again, and saith unto them, Behold, I bring him out to you, that ye may know that I find no crime in him. Jesus therefore came out, wearing the crown of thorns, and the purple garment. And *Pilate* saith unto them, Behold, the man! When therefore the chief priests and the officers saw him, they cried out, saying, Crucify *him*, crucify *him*. Pilate saith unto them, Take him yourselves, and crucify him: for I find no crime in him. The Jews answered him, We have a

THE FOUR NARRATIVES.

JOHN

law, and by that law he ought to die, because he made himself the Son of God. When Pilate therefore heard this saying, he was the more afraid; and he entered into the palace again, and saith unto Jesus, Whence art thou? But Jesus gave him no answer. Pilate therefore saith unto him, Speakest thou not unto me? knowest thou not that I have power to release thee, and have power to crucify thee? Jesus answered him, Thou wouldest have no power against me, except it were given thee from above: therefore he that delivered me unto thee hath greater sin. Upon this Pilate sought to release him: but the Jews cried out, saying, If thou release this man, thou art not Cæsar's friend: every one that maketh himself a king speaketh against Cæsar. When Pilate therefore heard these words, he brought Jesus out, and sat down on the judgment-seat at a place called The Pavement, but in Hebrew, Gabbatha. Now it was the preparation of the passover: it was about the sixth hour. And he saith unto the Jews, Behold, your King! They therefore cried out, Away with *him*, away with *him*, crucify him. Pilate saith unto them, Shall I crucify your King? The chief priests answered, We have no king but Cæsar. Then therefore he delivered him unto them to be crucified.

THE ROMAN TRIAL

THE trial of their Messiah by the Sanhedrin, had it stood alone, would have no doubt been the most interesting judicial transaction in history. The law of Moses, perpetuated though modified by Christianity, has perhaps been more influential than any other code of the world. Yet that law has had one rival—in the mighty jurisprudence of Rome. "The written reason of the Roman law has been silently or studiously transfused" into all our modern life, and lawyers of every nation look back with filial reverence to the great jurisconsults of the great age of the Imperial Republic. But between the two influences there is one important point of contrast. In the Hebrew commonwealth law was the product of religion. It was received, as Christendom has been content to receive it, as a Divine rule. There is no evidence whatever that the Jewish race was remarkable for an innate passion for justice, or for any such "tendency to righteousness" as might have originally led it to religion.

Their whole history and literature indicate, on the contrary, that it was the intense sense of the Divine which moulded the nation originally, and which afterwards led to a widespread though imperfect cultivation of the *ars boni et æqui*. Even that Rabbinic cultivation, as we have seen, was marred by continual exaggerations and artifices which reveal the original inaptitude of the race for the highest judicial excellence. Accordingly, down to the time with which we are dealing, it remained a small, isolated Asiatic tribe, filled through and through with national and religious prejudices. It is not to such a source that men look for a model of the administration of equal laws. But there have been races in the world who reflected, as there are races who do reflect, in an eminent degree, that deep sense of righteousness which lies at the root of all law. And of all such races, ancient and modern, the greatest was that which at this time ruled over Palestine and over the world. When the sceptre departed from Judah, it passed into the strong, smiting hands of Rome; and already all the nations had begun to exchange their terror of Rome's warlike might for that admiration of its administrative wisdom which has grown upon the world ever since. And already, too, that

admiration was mingled with confidence and trust. Those Eastern races felt, what we two thousand years after can historically trace, that the better part of the unequalled authority of Roman law was due to the stern, hard virtues of the early race and early Republic. It was dimly recognised then, and it is clearly traceable now, that that influence and authority sprang from an instinct of righteousness enforced by prætor and proconsul in every subject land, long before Ulpian or Gaius had written it out into immortal law.

Pontius Pilate was at this time the representative of Rome in Judæa—the governor, as he is called in the Gospels. But it will be found instructive to note more carefully what his exact position was. He was the *Procurator Cæsaris*; the procurator, deputy, or attorney of Tiberius in that province. And he was no *procurator fiscalis*,[1] with functions equivalent to those of Quæstor. Pilate's was no such subordinate or financial office. He was a procurator *cum potestate*; a governor with civil, criminal, and military jurisdiction; subordinated no doubt in

[1] The name is still used in Scotland, having had there originally its old sense of "the deputy of a provincial judge appointed by him to look after money matters."

rank to the adjacent Governor of Syria, but directly responsible to his great master at Rome. And what was the relation of the Emperor himself to the inhabitants of Judæa and to the world? The answer is important. The Emperor was neither more nor less than the representative of Rome. In modern times men associate the imperial title with absolutism, and a more than royal power. To Romans, even in the days of Tiberius, the name of a king was intolerable, and absolutism, except under republican forms, distasteful. Accordingly, when Augustus became the undisputed chief of the Republic, and determined so to continue, he remained nominally a mere private nobleman or citizen. The saviour of society did not dare to attack the constitution of the State. He effected his object in another way. He gathered into his own hands the whole powers and functions, and accumulated upon his own head the whole honours and privileges, which the State had for centuries distributed among its great magistrates and representatives. He became perpetual Princeps Senatûs, or leader of the legislative house. He became perpetual Pontifex Maximus, or chief of the national religion. He became perpetual Tribune, or guardian of the people, with his person thereby made sacred and

inviolable. He became perpetual Consul, or supreme magistrate over the whole Roman world, with the control of its revenues, the disposal of its armies, and the execution of its laws. And lastly, he became perpetual Imperator, or military chief, to whom every legionary throughout the world took the *sacramentum*, and whose sword swept the globe from Gibraltar to the Indus and the Baltic. And yet in all he was a simple citizen —a mere magistrate of the Republic. Only, in this one man was now visibly accumulated and concentrated all that for centuries had broadened and expanded under the magnificent abstraction of Rome. Tiberius, therefore, the first inheritor of this constitution of Cæsar Augustus, was in the strictest sense the representative of that great city that ruled over the kings of the earth. And the Roman knight who now governed in Judæa was his representative in his public capacity. For Augustus, as is well known, had divided the provinces into two classes. To the more peaceful and central he allowed the Senate to send proconsuls, while even over these he reserved his own consular and military power. But some provinces, like Judæa, he retained in his own hands as their proconsul or governor. Strictly and constitutionally, the governor of

the Jewish nation, at the time of which we write, was not Pilate at Cæsarea or Vitellius at Antioch, but Tiberius at Rome. He was the Proconsul or Governor of Judæa under the still-existing Republic—a Republic now almost identified with himself. And Pilate, whom the Jews popularly called their governor, was strictly the procurator of the great Proconsul, holding civil and military authority by delegation from him in whom was now embodied the boundless authority of Rome. Such was the tribunal before which the Council of the Sanhedrin is now to lead a prisoner.

Pilate sat in his Prætorium on the morning of that "preparation-day," to transact business and administer justice as usual. In what spot in Jerusalem his judgment-seat was on this occasion set up, cannot certainly be known. It may have been within the fortress and under the tower of Antonia, the visible symbol of Roman predominance which frowned beside the temple. Much more probably it was "Herod's Prætorium," that magnificent palace to the north of the temple which Josephus describes, and which had been recently built by the Idumean kings. Their former palace was also still in existence, and the visit of the Roman procurator and the Tetrarch of Galilee to the same feast, while it raises the

question which of them occupied the new and more splendid residence, suggests the inevitable rivalry and possible "enmity" of their relation. If we suppose that Pilate, like Florus, asserted his right to occupy the new palace, we may remember that its white marble semicircle enclosed an open *Place* which had looked out on the sacred city, and was almost as public as the space between Antonia and the temple. In the open space in front of this or any other Prætorium the movable *Bema* or tribunal could at once be set up. But on this morning Pilate was still sitting within the judgment-hall. Outside was the roar of the Eastern city awakening on a Passover dawn; within, the clash of Roman steel, the altars of the Roman gods, and perhaps the sculptured frown of the distant demigod Tiberius. Into that heathen chamber the priests and doctors of the separated nation would not enter during their sacred week; and the Roman, with his Roman smile, graciously removed their difficulty by coming with his soldier-lictors to the gate. But his first words there, as his eyes fell upon the prisoner who stood with his hands bound before him, were: "What accusation bring ye against this man?" We recognise instantly the spontaneous voice of Roman jus-

tice. It was no doubt meant to suggest his own authority and power of review, and in that respect we must presently consider it. But it was before everything else the instinctive utterance of a judge, and it at once recalls that memorable dictum of Pilate's successor in the same seat: "It is not the manner of the Romans to deliver any man to die, until that he which is accused have the accusers face to face, and have licence to answer for himself concerning the crime laid against him." So ever spoke the worst of the Roman governors — and neither Pilate nor Festus was among the best—out of the mere instinct and tradition of justice which clung to their great office among the treacherous tribes around. The chief priests and scribes on this occasion avoided the demand to know the accusation. "If he were not a malefactor, we would not have delivered him to thee." The insolent evasion of his question was not likely to propitiate Pilate, who instantly puts the matter on its true footing by the calm but somewhat contemptuous reply, "Take ye him, and judge him according to your law." Sullenly came the answer, "It is not lawful for us (it is not permissible—*οὐκ ἔξεστιν*) to put any man to death." The answer revealed (what the word

"malefactor" had perhaps already implied, and what may have been involved in their bringing their prisoner to Pilate at all) that it was a capital charge which they had come to make. But it closed this important opening dialogue. The conversation just narrated is only found in the Gospel of John; and it is remarkable that a narrative supposed to be much later than the others should record words which not only have the strongest internal evidence of truth, but to which subsequent investigation has given immensely increased historical value.

For at this point of the story comes in the question of conflict of *jurisdiction*. Why did the Jews go to Pilate at all? We have seen that their Council condemned Jesus to be "guilty of death." Had they no right to pass such a sentence? or, having the right to pass it, had they merely no power to execute it? How far did the authority of the governor trench upon, or supersede, the authority of the Sanhedrin? Which of them had the *jus vitæ aut necis*? What was the relation of the two powers, the Jewish and the Roman, to each other at this time?

This broad historical question lies at the root of the views which may be taken of the legal

point—views which have sometimes been extremely contrasted. In the controversy between Salvador and Dupin, the former (true in this to the sad claim of some of his nation of old, "His blood be on us") urged that the Sanhedrin had full authority to try even for capital crimes, and that their sentence of death required only the countersign or endorsement of the Roman governor. His opponent held that the Jewish court had no right to try for grave, or at least capital, crimes at all; that their whole procedure was a usurpation; and that the only real or competent trial was that which we are about to consider. I have no intention of going into the great mass of historical investigation which has been accumulated on this confessedly difficult point. There seems no one consideration which is quite conclusive upon it. Thus it would be rash to ascribe to the assertion of the Talmud, that "forty years before the destruction of the temple the judgment of capital causes was taken away from Israel," the praise of exact chronological accuracy. Yet it is very striking as showing the time about which the doctors of the Jewish law were willing to hold that their power of life and death (no doubt already restricted or suspended under the despotism of

Herod) had finally passed away. But on the general subject of the relation of the two powers in that age there are some considerations which reasoners on either side do not seem to have always kept in view, but which are important. 1. There was no *concordat* on this subject between the Romans and the Jews. The latter were the conquered nation; their jurisdiction, including the power of life and death, was wrested from them *de facto*, and they were obliged to submit. But *de jure* they never did. To them, at least to the great mass of the nation, the Sanhedrin was still the national authority, especially in accusations relating to religious matters. 2. On the Roman side, the matter was of course precisely the reverse. Their view of the jurisdiction of subject races generally, and of the Jews in particular, was, I suspect, that it was just so much as they chose to leave them. In most cases that formed a very large field. The Roman governor sanctioned, or even himself administered, the old law of the region; but the policy of the ruling power was to concede to local self-government as much as possible. The concession was of course all the larger where there was no disposition on the part of the province to provoke a

contest. In Roman law as in Roman campaigns, in questions of jurisdiction as in questions of politics, the maxim of the haughty and wise rulers of the world was *parcere subjectis et debellare superbos.* 3. It is evident that a large latitude was allowed on this subject to the great Roman officers—proconsuls or procurators—who administered *la haute justice.* The Republic and the Emperor permitted, and indeed demanded, that they should stretch or relax their authority as the particular case or exigency required. In ordinary matters brought before their tribunals, the rule on which they acted is perfectly expressed, a few years after this, by Annæus Gallio, the humane proconsul of Achaia, and brother of the philosopher Seneca: "If it were a matter of wrong or wicked lewdness, O ye Jews, reason would that I should bear with you: but if it be a question of words and names, and of your law, look ye to it; I will be no judge of such matters." But while they drove such questions from the judgment-seat, so long as they did not affect the rights of the sovereign power, the least hint that one of these words or names or questions of another law could prejudice the supreme power of Rome was enough to authorise the governor

to plunge his axe into the offending part of the body politic with prompt and savage severity.

These general considerations should never be forgotten in reading the scattered and often inconsistent historical notices on the subject. They show that the extreme views, which critics in our own time have maintained, were probably held even then by the opposing powers whose jurisdictions were in poise. But the balance of evidence is very strong that, at this time, all questions of life and death in Judæa were by Roman law and practice reserved for the final decision of the Roman governor. In such cases the Jews had, at the most, only the *cognitio causæ*: they could try the cause, but not sentence the accused. Nor can there be much doubt that the governor's final power in these cases was not a merely ministerial right of endorsement and *executio*; it was also a power of *re-cognitio*, or review, in so far at least as he chose to exercise it. Whether this reservation to the governor was such as to deprive the Jewish courts of their rights as tribunals of first instance—whether any previous trial of a capital cause before the Sanhedrin was necessarily a usurpation — is another and a more difficult question. With regard to ordinary

civil crimes—robberies or assassinations—the Jewish rulers may have been content not to interfere further than to bring the perpetrators to the Roman tribunal for judgment. The Roman judges, on the other hand, may have been quite willing to send to the cross without much inquiry any ordinary malefactors against whom the authorities of the country, having already inquired into the case, were willing to appear as accusers. But, obviously, a more serious question arose when the alleged crime was a religious one—a claim, as prophet or Messiah, to change the ecclesiastical institutions. In such a case the Sanhedrin itself no doubt maintained, as the Jews generally did on its behalf, an exclusive right to judge in the first instance; and its tendency would be very strong to deny any *re-cognitio* by the Roman power, and either not to call in that power at all, or to limit it to a mere right of countersign. What view the Roman governor might take, in the very unusual case of such a charge being brought to his tribunal, was another matter.

But in truth, while the dialogue-narrative of the Fourth Gospel admirably illustrates the historical relations of the parties at the time, the history as it actually occurred supersedes

the necessity for referring to these more general relations. Whether it was legitimate or not for the Jews to condemn for a capital crime, on this occasion they did so. Whether it was legitimate or not for Pilate to try over again an accused whom they had condemned, on this occasion he did so. There were certainly two trials. And the dialogue already narrated expresses with the most admirable terseness the struggle which we should have expected between the effort of the Jews to get a mere countersign of their sentence, and the determination of Pilate to assume his full judicial responsibility, whether of first instance or of *révision*. The reluctance of the Jews on the present occasion was no doubt prompted, not so much by their usual ecclesiastical independence as by their dread lest inquiry by Pilate should prevent his carrying out their scheme. But as matters actually turned out, the collision which the Procurator's first words provoked had the effect of binding him publicly, before the men of both nations who surrounded his judgment-seat, to deal with this capital case in his judicial capacity. It was henceforth no mere matter of administration, no incident of summary police jurisdiction or military court-mar-

tial. It was a deliberate judgment of life and death by the supreme civil ruler, who had interposed his jurisdiction between an accused man and the chief authorities of the subject nation.

The *Accusation* demanded by Pilate necessarily followed, now that he had insisted on being judge in the cause. We have this given with considerable formality in the Gospel of Luke; and though it is omitted in the three others, the first question of Pilate to Jesus, which they all record, implies a previous charge. Luke gives it thus: "We found this man perverting the nation, and forbidding to give tribute to Cæsar, saying that he himself is Christ a King." Had the accusation retained the form in which it was brought before the Sanhedrin—had it been a merely religious or ecclesiastical crime which was now named—a different question would have arisen. Had the chief priests, when they "began to accuse" Jesus, said at once what they passionately exclaimed at a later stage of the cause, "We have a law, and by our law he ought to die, because he made himself the Son of God," it may be doubtful what Pilate would have done. He was authorised as governor to administer their law, or to preside over and control its administration;

and while his leaning would be, like that of Gallio, to consider this question a matter of words, he might have been induced to see that these words covered grave consequences to the State. But such difficulties were avoided by the deliberate change made by the accusers in the form of the accusation—or perhaps, by their reverting to that accusation which had been originally intended, and for which the ecclesiastical procedure of the night before was a pretext or preliminary. If we accept this sentence of Luke as equivalent to the *nominis delatio* of the Roman law, or to the affidavit of the prosecutor-witness of the Hebrew law already considered—and it has resemblances to both—it throws a flood of light before as well as behind. The charge of "perverting" (*διαστρέφοντα*), including perhaps "revolutionising" as well as "seducing" the nation, was fairly true, and was distinctly included in the Jewish procedure of the night before. No doubt to Roman ears it was ambiguous, but the ambiguity recalls that very real doubt which had governed his mind who said, "If we let him alone, all men will believe on him, and the Romans will come and take away our place and our nation." The culminating charge, that

Jesus called Himself "Christ a King," was also true, and had just been acknowledged to be true, though scarcely in the sense in which the accusers desired that the ears of the governor should receive it. But if we are to take Luke's narrative, we must believe that the charge was not left in this ambiguous and ineffective form. The managers of the impeachment had no doubt not intended to make a deliberately untrue statement before the heathen judgment-seat. They wished, at as small an expense of falsehood as possible, to throw upon the foreign power the odium of a prophet's death. But the prompt utterances of Pilate seem to have forced them into the villainy they would rather have avoided, and between the more ambiguous charges of seducing the nation and claiming a royal Messiahship they add, by way of illustration, "forbidding to give tribute to Cæsar." It was a sheer falsehood, and some of the accusers must have known it to be the converse of the fact as recently ascertained. But it was a suggestion which, as they must also have known, would give the most deadly significance to the other vaguer and truer heads of the indictment, and would make it impossible for the governor to waive the capital charge.

For there is no mistake as to what the crime here imputed is. It is *majestas*—the greatest crime known in Roman law, the greatest crime conceivable by the Roman imagination — an attack upon the sovereignty or supreme majesty of the Roman State.[1] In the early days of the Republic the name *perduellio* was applied to treason and rebellion, and the citizen condemned by the people for that crime was interdicted from fire and water, or hanged upon an *arbor infelix*. As the rule of the city spread over the world, treason came to be known as an attack upon its majesty; and various laws were passed to define this crime and the treatment of it, the chief enactment being the *Lex Julia*. According to this law, every accusation of treason against a Roman citizen must be made by a written libel. A Jewish provincial had of course no such protection. He stood before the Procurator of the Cæsar, with no defence against the summary exercise of absolute power but the plea of justice.

[1] "Crimen adversus populum Romanum vel adversus securitatem ejus" (Ulpian, *Dig.* xlviii. 4. 1). The origin of the name is plain. Cicero defines majestas as "magnitudo Populi Romani," and the full name of the crime is "crimen læsæ aut imminutæ majestatis." It is very adequately expressed by our word treason.

We come now to the *Defence*. All the narratives bear that Pilate put the same question to Jesus, in the same words, "Art thou the King of the Jews?" but that, on His answering in the affirmative, the Roman came to the paradoxical conclusion that there was "no fault in him." The Fourth Gospel contains the explanatory conversation which these facts almost necessarily imply. The statement of Jesus is unusually impressive. It is couched, no doubt, in that involved, allusive, and aphoristic style of utterance which we find in this Gospel from end to end. But we must remember that all the biographies represent this very style as occasionally used by Jesus, and as characteristic of Him in critical circumstances. It comes out in all the histories when He touches on the esoteric "mysteries of the kingdom" He preached, or where His own claims are brought in question; and it manifestly grew more and more His manner of utterance towards the close of His career. We hold, therefore, that a statement which, though only recorded in the latest Gospel, must according to all the others have been substantially made, and which as reported is at once startlingly original and intensely characteristic, has every

internal evidence of being historical. This dialogue took place in the Prætorium, where Jesus may have possibly been detained while the question of jurisdiction was settled with His accusers. (It rather appears, however, that He must have been present while the accusation was made; the two first Evangelists state that either then or at a later stage His silence extorted the marvel of the governor, who said, "Hearest thou not how many things they witness against thee?") He now, however, brings his prisoner within, and puts the sudden question, "Art thou the King of the Jews?" Jesus' answer, "Sayest thou this of thyself, or did others tell it thee of me?" does not seem to have been a request to know what had been uttered by the Jews in His absence. The words evidently have a deeper reference. They are equivalent to, In what sense dost thou use the expression? "If thou sayest it of thyself, in the sense in which a Roman would naturally use the word, then I am not the King of the Jews. But if others told thee this of me, if thou art using the words of Hebrew prophecy, or of the world's hope," that may need further explanation. Pilate strives to reply as a Roman should, "Am I a Jew? Thine own

nation and the chief priests have delivered thee to me: what hast thou done?" It was throwing back, and not unfairly, the burden of explanation upon the accused. So He who had kept silence before the midnight Sanhedrin, and who made no answer even now to their dissimulated accusation, at once frankly answered the heathen magistrate, who desired himself to know the truth of the case: "My kingdom is not of this world: if my kingdom were of this world, then would my servants fight: . . . but now is my kingdom not from hence."

In considering words so memorable we must avoid as much as possible the theological and ecclesiastical, and look only from the historical, and in particular the forensic and judicial, point of view. Whatever else these words import, they are in substance, and almost in form, a defence. If they imply a confession of kingship, they express an avoidance of the particular kind of kingship charged. They do not set up a plea in bar of the jurisdiction. They seem to acknowledge that a kingdom of this world would be a legitimate object of attack by the deputy of Cæsar, but they deny that the kingship of Jesus could be so described. The most important commentary on the words is of course the recent

and famous scene of the tribute money, where Jesus, being demanded as a Jewish patriot and prophet, "Is it lawful to give tribute to Cæsar, or no?" answered, "Show me a penny," and, having asked the significant question as to Cæsar's image and superscription engraved upon it, closed the discussion with the words, "Render therefore unto Cæsar the things that are Cæsar's, and unto God the things that are God's." The two incidents, in common with the whole of the history, make it certain that it was no part of His plan of kingdom, as it was no part of the plan of Christianity historically, to attack the Roman power. But this critical utterance to Pilate (like that former one) seems to go farther. On the face of it, it indicates that there was no necessary collision between the kingdom which Jesus was prepared to assert as His own, and that great "kingdom of this world" which His judge represented. An actual collision there too probably might be. But the words are meaningless unless they are taken as asserting separate spheres within which it was possible for each power to confine itself, and by confining themselves within which it was possible for them to escape collision. Only one of these kingdoms is described, and it is defined generally as "of

this world," the definition being illustrated by the suggestion that in every such kingdom the monarch may suitably be defended by the armed force of his subjects. The other is as yet only defined by the negation of these characteristics.

Pilate, as the result indicates, was already impressed by the statement, and perhaps convinced by it of the innocence of the accused of all conspiracy against Rome. And yet Jesus still spoke of a kingdom—a kingdom too in this world, though not of it[1]—and His words of renunciation were more royal than all the Roman had ever listened to of greatness. With true judicial tact, the governor lays his finger on the exact point which required to be brought from negative implication into express statement. "Art thou a king then?" he asked the prisoner whose kingdom was not of this world. And as before, to the adjuration of God's High Priest, so now, to the representative of all the greatness of earth, the answer came back, making a crisis in the world's history, "Thou sayest it: I am a king." He who spoke so to a Roman governor knew that He was offering Himself to the cross, and that the next few hours might close that

[1] "My kingdom is not of this *world*." The word used is κόσμος, not αἰών.

fateful life. And the thought was in His mind when he deliberately added, "To this end was I born, and to this end am I come into the world, that I might bear witness unto the truth." Whatever else is included in words so great, this "witness to the truth" certainly embraces the testimony which a moment before had been given by the speaker Himself—by Him "who before Pontius Pilate witnessed the good confession" to the existence of a kingdom, true and real, though not of this *kosmos*. But this supreme utterance struck a deeper note than even the assertion of a spiritual and separate kingdom. It proclaimed that which is the basis of all human veracity and virtue, but which in those later ages was becoming strange to Roman ears—the existence of an eternal world of truth outside of man—a universal Divine system of things, high above all local or national tradition, and indeed above all human beliefs and desires. Over that objective truth men have no power: their highest privilege is to recognise and to confess it. And those do recognise it who have already a certain kinship and relation to that central truth—who are "of the truth." For the last words to his judge of Him who now claimed to be both the

witness and the King of that greater world were, "He that is of the truth heareth my voice."

"Pilate answered, What is truth?" The blank response, half-sarcastic, half-despairing, wholly sceptical, will claim notice at a later stage. In the meantime we follow the course of the judge, who, thus waiving the personal question presented to him,[1] goes on to deal with the accusation and the accused. The narratives all bear that Pilate reached and expressed the conclusion that the crime charged had not been proved—that indeed he found in the accused "no crime at all." And the last Gospel distinctly refers the first public utterance of this conviction to the exact point in the conversation and defence at which we have just arrived. It was the only defence which the accused is at any time stated to have offered; and Pilate

[1] The apocryphal "Acts of Pilate," after giving this conversation with much accuracy, adds a few sentences which, while they rather vulgarise the previous utterances, indicate a special application of the words of Jesus which may have occurred to the mind of the governor as he passed from their higher suggestions to announce his judgment in the cause:

"Pilate saith unto him, What is truth? Jesus said, Truth is from heaven. Pilate said, Therefore truth is not on earth. Jesus said to Pilate, Believe that truth is on earth among those who, when they have the power of judgment, are governed by truth and form right judgment."

now went straight out from the Prætorium, and announced his verdict, perhaps from the judgment-seat. Yet was this utterance, as it turned out, only the first step in that downward course of weakness the world knows so well: a course which, beginning with indecision and complaisance, passed through all the phases of alternate bluster and subserviency; persuasion, evasion, protest, and compromise; superstitious dread, conscientious reluctance, cautious duplicity, and sheer moral cowardice at last; until this Roman remains photographed for ever as the perfect feature of the unjust judge, deciding "against his better knowledge, not deceived." Upon some of the points in the Evangelic narrative we need not dwell. The graphic incident of the judge catching at an allusion to Galilee, and, on ascertaining that the man was a Galilean, sending him to Herod, may be just noticed in passing. The word used is *ἀνέπεμψεν* (*remisit*), which seems the exact technical term for restoring an accused to his proper jurisdiction, as here in sending Him from a *forum apprehensionis* to a *forum originis*. Herod's declinature was prudent as well as courteous, when we remember the terms of the accusation. A man, even a provincial, accused of *majestas*,

"stood at Cæsar's judgment-seat, where he ought to be judged"; and the Idumean "fox" may have dreaded the lion's paw, while very willing to exchange courtesies with the lion's deputy. The second appearance at the tribunal of the governor shows a distinct accession of weakness on the part of the judge, and of pressure upon him by the accusers. His wife's[1] morning message troubles his conscience, but does not purify his heart. Pilate is now willing to "chastise him and let him go," *i.e.* to mangle an innocent man with the savage Roman scourge. The Jewish accusers refuse the compromise; and Pilate, characteristically, seems to have left them under the impression that he had finally sent Him to the cross, while he still intended to make a postponed appeal to their compassion. But before taking his first step in actual guilt, the judge washes his hands with the memorably vain words, "I am innocent of the blood of this just person: see ye to it." After the scourging, the three Evangelists record nothing but the insults of the fierce soldiery to one who was given up to them as a Jewish traitor to their

[1] There is a curious historical question whether the wives of governors were at this time permitted to go down to the province with their husbands, which turns out in favour of Claudia Procula's legitimate presence in Judæa.

Emperor. But the later Evangelist interposes a series of incidents which are, now as before, noted with the finest characterisation and the most delicate verisimilitude. He alone records the "Behold the man!" with which the struggling Procurator, whose "faith unfaithful" still made him "falsely true," sought to move the multitude. He alone records the response, "We have a law, and by that law he ought to die, because he made himself the Son of God"—an utterance in exact accordance with that narrative of the Hebrew trial which is given by all the Synoptics, but which John has omitted. It is he who notices the unexpected but most natural effect of this claim upon the governor, whom the former utterances of the King "come into the world" had deeply impressed. "Whence art thou?" he almost tremulously demands. But from the first moment of his vacillation Jesus had given him no answer. Pilate, accordingly, at the very time when he is described as inwardly "more afraid," flashes out in that insolent tone which less discriminating secular historians regard as the only one characteristic of him, "Speakest thou not unto me? knowest thou not that I have power to release thee, and power to crucify thee?" Jesus breaks the silence

by a final word of answer, which is of high importance for our subject: "Thou wouldest have no power against me, except it were given thee from above: therefore he that delivered me unto thee hath greater sin." Some writers who hold that Pilate alone had "jurisdiction" in this case, and that the proceedings of the Sanhedrin were a usurpation, have appealed to this text, as containing in its first clause an acknowledgment of the exclusive right of the Roman tribunal, and in its last a denunciation of the illegality, as well as treachery, of Caiaphas. This is unwarranted, and in the circumstances grotesque. Yet, while we notice here first of all the extreme consideration and almost tenderness with which the sufferer judges His judge,[1] we must confess that the words, "Thy power (ἐξουσία) is given thee from above," do relate themselves to the previous acknowledgment of a "kingdom of this world," a *kosmos* in which men are to give to Cæsar the things that are Cæsar's; while they add to that former acknowledgment the explicit idea (afterwards enforced by the apostles) that this earthly kingdom with its earthly aims is also from above. The powers that be are ordained of God; Pilate, who knew this not,

[1] "Judex judicantium" (Goesius).

was abusing a great and legitimate office partly through a heathen's ignorance; and in so far he was less guilty than the false accusers who sat in Moses' seat. It was not strange that words so noble should have prompted one last effort on the judge's part to save himself from his weakness. But it was too late. The Jewish hierarchs had now taken the full measure of the man, and their final argument was one fitted to bear down in him all of conscience that remained. "If thou let this man go, thou art not Cæsar's friend: whosoever maketh himself a king speaketh against Cæsar."

Few utterances are more valuable historically than this last general statement. To feel the full force of it we must recall how, as already explained, the Cæsar had gathered up in himself all the public offices of the Republic, so that treason against the State and treason against him had become almost the same.[1] The old Roman watchfulness to crush out attempts

[1] Ulpian, in the great age of Roman Law, an age somewhat later than that of Tiberius, explains that the crime of "majestas" was next to that of sacrilege. In truth, when the Cæsar had become Divus, not only by apotheosis after death, but by the servile worship of a world while he was yet upon the throne, treason and sacrilege were not so much associated as united. And so the test proposed to later Christians by the tribunals often was, to adore the deity of Cæsar.

against Rome was now intensified by being absorbed into the jealous personal suspicion of a despot. It was no anti-climax when the shrewd Jewish politicians, instead of saying, "Whosoever maketh himself a king speaketh against the majesty of the State," preferred to say, "Whosoever maketh himself a king speaketh against Cæsar." Long before this period of the reign of Tiberius the latter had become the deadlier form of the crime. Some of the accusers must have remembered the early days of the dynasty, when Julius and Octavius perpetrated their own successful *lèse-majesté*, and the nation of the Jews, adhering to them in the great convulsion, merited the name which came afterwards to be known as the title of honour, of "Cæsar's friends." For some time thereafter, indeed, Palestine was on the footing of a "client-state" under Cæsar; since 6 A.D. it had been absolutely Cæsar's province. And the leading Jews must have been aware that while the first Emperor had extended the law of treason to punish libels against his own person, Tiberius, still more watchful in his jealousy, used the *leges majestatis* continually against all who failed in respect to the majesty of Cæsar, even if they did not speak against him (*ἀντιλέγειν*) in the sense of

favouring counter claims by themselves or others. The great historian records how, even before the date when Pilate was sent to Judæa, when the provinces appeared before Tiberius with complaints against their proconsuls, they took care to throw in along with the usual accusations of rapacity the added charge of treason—"Addito majestatis crimine, quod tum omnium accusationum complementum erat!"[1] To Pilate, as a personal dependant on the favour of the Emperor (a favour seemingly originally procured through Sejanus, who, if not already hurled from power, was by this time tottering to his fall), all this must have been continually and urgently present, the more as he had already earned the hatred of his province, and dreaded its revenge. His fears were not groundless. Tiberius was still upon the throne when, a few years after, Pilate was superseded, and ambassadors from Palestine, relying on the hereditary attachment of the nation to the imperial house, were sent to Rome to witness against the recalled and degraded governor. The shadow of that distant day paralysed Pilate on this morning. What if he were to be accused before Cæsar of spoliation and bloodshed, and, too well knowing himself to

[1] Tacitus, *Annales*, iii. 39.

be guilty of those wrongs, should read also in the sunken eyes of his judge that other charge, the complement and the crown of every lesser crime? He who had so long persisted against all other arguments now succumbed at once before the well-chosen words: "If thou let this man go, thou art not Cæsar's friend: whosoever maketh himself a king speaketh against Cæsar." He ascended the tribunal, from which alone a final sentence could be legally pronounced by a Roman judge—in the present case, apparently, a portable seat carried out from the Prætorium and placed in front upon a *lithostróton* or tesselated pavement. Yet even here he relieved his bitter feelings by the words to the accusers, "Shall I crucify your King?" But on the chief priests making the historical answer, "We have no king but Cæsar," the judge turned to Him who had claimed another kingdom, and, in such words as "Ibis ad crucem," delivered him to be crucified.

"Was Pilate right in crucifying Christ?" The question was put in the last generation in a book of extraordinary ability, which opens with the most powerful attack in our language on what has been known in modern times as the right of "liberty of conscience." If you deny

that right, argued John Stuart Mill and others, you must approve of Marcus Aurelius and the other persecutors of Christianity—nay, you must go farther, and find "a principle which will justify Pontius Pilate." Sir James F. Stephen accepted the challenge; and his argument, while it in the first place raises the question, Did Pilate do right as a judge and as a man? will lead us on to the farther question, What was the law under which this judge ought to have acted?

"Was Pilate right in crucifying Christ? I reply, Pilate's paramount duty was to preserve the peace in Palestine, to form the best judgment he could as to the means required for that purpose, and to act upon it when it is formed. Therefore, if and in so far as he believed in good faith and on reasonable grounds that what he did was necessary for the preservation of the peace of Palestine, he was right." [1]

1. The suggestion which is here made, that Pilate may have "believed in good faith that what he did was necessary for the preservation of the peace of Palestine," is purely gratuitous. Whether that would have justified him in condemning a man he believed to be innocent, we

[1] *Liberty, Equality, Fraternity* (by James Fitzjames Stephen, Q.C.), p. 87.

may touch upon hereafter. But in the meantime there is not the slightest ground for the suggestion itself. The narratives are uniform in asserting his expressed conviction of his prisoner's innocence, his knowledge that Jesus had been delivered "for envy," his scoffing incredulity in speaking to the Jews of their King, and his final yielding, as a judge, to those *vanæ voces populi* against which his own law warned him, and yielding to them too, only when his personal and private interests were at last menaced. Now, the Christian narratives which have handed this down are, strange to say, in no respect hostile to Pilate. Jewish and other writers who expressly treat of the character of this governor give us his portrait as rapacious, cruel, and unjust. The Christian historians give no portrait, and have occasion to refer to him incidentally only where his actions are fitted to excite the keenest exasperation. Yet the few historical side touches of the Evangelists restore for us the man within the governor, with a delicacy, and even tenderness, which make the accusing portrait of Philo and Josephus look like a hard, revengeful daub.[1] Is there, in the Tito or Buls-

[1] My view of his true character scarcely varies from that so tersely given by Dr. Ellicott: "A thorough and complete type

trode of modern delineation, anything more true to nature, more provocative of sudden sympathy from men who know the pressure of public life, than that morning's mental history of the sixth procurator of Judæa, as given by the friends of the man whom he crucified? The character of Pilate and the motives for his vacillation are only too intelligible. But that at any point of this vacillation he came to believe that his sentence was called for to preserve the peace of the province, is an unhistorial suggestion.

2. Had the history run at all in the direction suggested, there are various situations which might be figured. That the judge, even if he were not a military governor with *merum imperium* delegated from Rome, should slay a man who was overtly and in intent seditious, raises no question. Neither Mr. Mill, nor any other advocate of liberty, questions the duty of Government to preserve the peace. That a governor, sitting or not sitting as a judge, should deliver to death a man whom he believed to

of the later-Roman man of the world: stern, but not relentless; shrewd and world-worn, prompt and practical, haughtily just, and yet, as the early writers correctly perceived, self-seeking and cowardly; able to perceive what was right, but without moral strength to follow it out" (*Historical Lectures*, 6th ed. p. 350). Compare with Philo, in his letter on the Embassy to Caius.

have no intentions against the peace, because he was in point of fact dangerous to it, might raise a serious question.[1] In particular, it raises the distinction between the judicial and the administrative. What Pilate as administrator of the province might do in the way of deporting or even killing an innocent man for the sake of its peace, is one question. What he might do sitting as a judge and inquiring whether there

[1] "If this should appear harsh [the assertion that Pilate's duty was simply to maintain the Roman power] I would appeal again to Indian experience. Suppose that some great religious reformer—say, for instance, someone claiming to be the Guru of the Sikhs, or the Imam in whose advent many Mohammedans devoutly believe—were to make his appearance in the Punjab or the North-West Provinces. Suppose that there was good reason to believe—and nothing is more probable—that *whatever might be the preacher's own personal intentions*, his preaching was calculated to disturb the public peace and produce mutiny and rebellion; and suppose, farther (though the supposition is one which it is hardly possible to make even in imagination), that a British officer, instead of doing whatever might be necessary, or executing whatever orders he might receive, for the maintenance of British authority, were to consider whether he ought not to become a disciple of the Guru or Imam;—what course would we take towards him? He would be instantly dismissed with ignominy from the service which he would disgrace; and if he acted up to his convictions, and preferred his religion to his Queen and country, he would be hanged as a rebel and a traitor" (*Liberty, Equality, Fraternity*, p. 94).

Of course a true parallel would rather be: Suppose that the Guru or Imam were delivered to a British officer by his co-religionists on a charge of erecting a national system against the English Raj, and refusing to pay an English tax; that the officer, on personal examination, came to be satisfied that the man was

was "fault in this man touching those things whereof ye accuse him," is another matter; and it is the one with which we have to deal. The distinction, kept sacred in all jurisprudences, might well be confused in the minds of English lawyers by the powerful but provincial theory of Utility which they have been taught, but the spread of which from the professor's chair to

innocent and the charge was false; that, to pacify the other priests, he proposed an intermediate punishment of one in whom he found no fault; that under great pressure brought against him to act contrary to his view he vacillated half a day; and that at last, on being threatened with a complaint to his official superiors which might endanger his place or promotion, he ordered his prisoner to torture or to death. Suppose all this, and suppose that the story came out fully on his arrival in London, in how many drawing-rooms would he be received?

But take it even that the case were not so bad. Assume that a British officer thought himself compelled to order for execution a native preacher whose "personal intentions" were not in the least hostile or seditious, because his preaching might in point of fact be, or had in point of fact been, dangerous to the English power, and because the example would have a good effect. This is about the best case made for Pilate. If done judicially, it would be a judicial murder. If done administratively, what ought it to be called? I believe there are few who would hold that mere "consideration" by a British officer, whether or not he should do such an act, would infer ignominy or disgrace to the service. I believe, on the contrary, that few British officers who considered it would, as the result, think themselves compelled or even entitled to do it. As to the farther question of becoming personally a disciple of a "higher form of morals" than any previously known (the immediate peace of the region being first cared for), there does not seem any other difficulty than what is dealt with in the text, on page 104.

the judgment-seat will, I think, be prevented both by the scientific traditions of Europe and by the moral sense of mankind. In saying so, I do not forget the story of the English judge who told a prisoner, "I sentence you to die, not at all because you have robbed this house, but in order that other people may not rob other houses in future." That judge, if he existed and pronounced such a sentence, simply committed murder. But in the case with which we here deal we have not to do with such unjudicial motives for action. It was Caiaphas, not Pilate, who thought it *expedient* that one man should die for the people. And neither the one nor the other grounded the expediency on any immediately apprehended outbreak or on any danger to the peace. There was indeed no such immediate danger. How far there might be ultimate danger to the Roman State from the spread of convictions and the acceptance of claims like those of Jesus, was another matter, and it was the really important one. The true question, as the critic of the Liberty, Equality, and Fraternity watchword soon discerns, is between the universal supremacy of a Government whose claims extended to something much higher than keeping the peace on the one hand, and the

claims of a kingdom not of this world on the other.

3. Accordingly, the final defence made for the Roman governor—the only one which can be of any weight in consistency with the history, and the only one also which bears on the great question of liberty of conscience or repression of opinion—is contained in the following passage of very general theory, illustrated in the quotation in my note on pages 101, 102 :—

"Pilate's duty was to maintain peace and order in Judæa, and to maintain the Roman power. It is surely impossible to contend seriously that it was his duty, or that it could be the duty of anyone in his position, to recognise in the person brought to his judgment-seat, I do not say God incarnate, but the teacher and preacher of a higher form of morals and a more enduring form of social order than that of which he was himself the representative. To a man in Pilate's position, the morals and the social order which he represents are for all practical purposes absolute standards" (p. 93).

Whether this was the theory of Roman law, we may afterwards see. But it is here presented as the universal and true theory, against which it is difficult to contend seriously. It may be so. This, at all events, is not the place to deal directly with it, farther than by recording a fundamental and implacable opposi-

tion.[1] But it is exactly the place to point out that this was the theory which the defence of the accused seems directed to meet. The doctrine of the powerful book from which we quote is that "sceptical arguments in favour of moderation about religion are the only conclusive ones." To suggest such arguments to the governor, or at least to leave his mind to the sceptical poise of the average educated Roman of the day, might have seemed the prudent part in a prophet accused of treason. His words take directly the opposite course. Their assertion of a kingdom—a higher and ruling "form of morals and social order"—set up in the earth, but in a different plane and *kosmos* from the secular power of Rome, might of itself have implied the proclamation of a duty to recognise that kingdom. But when its assertion was backed by an immediate appeal to the truth, as that

[1] It is the same theory, conversely and *mutatis mutandis*, with Ultramontanism, and that not merely because in both the individual conscience is crushed under authority. "It appears to me," says our author, "that the Ultramontane view of the relation between Church and State is the true one" (p. 109), because, as is explained, Ultramontanes correctly hold that of the two powers one must be supreme, and the other must obey; and that there is no real distinction of a spiritual and a secular province in human life. The individual may thus have to obey the State even against his own religious convictions, but he and the State alike must obey the Church.

which men are born into the world to confess, the defence plainly resolved into a claim that this truth, and not any social order or traditional belief, should be the "final and absolute standard." And the last words addressed to Pilate clench "the duty of anyone in his position to recognise the teacher" of that higher order and extra-mundane truth; for "everyone that is of the truth heareth my voice."

And even if we prefer to disbelieve this conversation, we cannot escape from the fact that this was precisely the attitude taken up historically by Christianity. It did not claim merely to be one higher form of morals or religion among others. It claimed to be the true religion—in the sense of being both universal and obligatory. And the Empire, which would have been content to ignore it while it presented itself as simply a higher form of morals or even of social order, could not ignore it when it appeared as the universal and obligatory form. When it claimed to be the truth, Rome first answered, "What is truth?" and when it insisted on the right of truth to be obeyed, Rome answered again with persecution. And Christianity responded by the constant reiteration of the duty of every member of

the State, whether an official or not, to recognise this truth, to bear witness to it, and, if need be, to die for it. Hence the immense interest which has always attached to Pilate's answering inquiry. It was the utterance of one who was neither a philosopher nor a statesman, but simply a typical Roman gentleman, in a position where he represented his State. And precisely because it was so, his question, "What is truth?" lays bare the hinge upon which the mighty Roman world was then smoothly revolving towards the abyss. The Republic, we must never forget, was destined ere long to disbelieve—many of its leading spirits had come to disbelieve already—in its own morals and social order. The fact is certain, but the pathos of it has too seldom been acknowledged. Again and again in the past we have mused and mourned over Greece, and its search of truth intellectual—its keen and fruitless search, never ending, ever beginning, across wastes of doubt and seas of speculation lighted by uncertain stars. But to-day let us for once remember that greater race, the greatest this earth has known; called and trained through long centuries to the work of governing a world, and when at last that mighty inheritance came into

its hands, stricken with inward paralysis for want of a motive and a hope. Too well has our own poet drawn the picture—

> "In his cool hall, with haggard eyes,
> The Roman noble lay;
> He drove abroad, in furious guise,
> Along the Appian Way;
>
> "He made a feast, drank fierce and fast,
> And crowned his hair with flowers:
> No easier and no quicker passed
> The impracticable hours."

And so there crept upon men that moral languor and satiety of life which underlay the whole time of the Empire, and which often, even in the presence of a noble and protesting stoicism, hardened into cruel apathy or reckless despair. But have we always reflected how certainly this cynical moral mood of the dominant race was the result of the new circumstances into which it was thrown? In early days the Roman believed in himself, in his gods, in his institutions, and, above all, in his State. It was for him *theatrum satis magnum*—his standard, his rule, his righteousness. And so he was righteous, in his stern, relentless way. But now the world had grown wider. And what had sufficed for virtue in former times did not suffice for virtue now. A provincial belief, a national

religion, was too narrow for a world: it *necessarily* collapsed, and left the lords of earth, with strong hands and empty hearts, sceptical as to truth, and so lapsing from righteousness.

That this had become largely the result, even in the reign of Tiberius, is admitted. And it was plainly a position of matters very unfortunate for the application of the general rule suggested. That Pilate or Pliny, or any Roman official, should have to refuse a higher order of morals which his conscience approved, simply because his State believed in a lower, was hard enough. But that such an official should have to refuse that higher morality or religion, when both he and his State were ceasing to believe in the lower, was harder still. And that in such circumstances a judge should have to use systematic persecution against the confessedly higher convictions, simply to prevent their making head against a legal standard of faith which he or others had begun to disbelieve, was the most unfortunate thing of all. There is probably nothing which so excites the loathing of mankind as when the State persecutes for a faith which it has already begun to lose. And yet, obviously, that is precisely the time when dishonest persecution is most likely to happen,

and on the theory with which we are dealing it is what ought to happen. Pilate was quite prepared to act upon this theory, for in point of fact he acted from a lower motive still—his private interest. But let us suppose that he had risen so far as to desire only to do what was right, and let us suppose also that the law he administered demanded the persecution of all convictions hostile to the religion of Rome. It is fair that we also should answer the question, What ought he in this case to have done? What in such circumstances was the "duty of a man in Pilate's position"? I answer that his duty was (having first cared for the immediate peace of his district) to refuse to represent that law, and to resign his position rather than outrage a principle of conscience, which lies deeper than all social superstructures of either the Church or the State.

But this brings us to the final question: What, in point of fact, was the law of Rome in the matter of the trial of Jesus Christ?

Its fundamental principle was that the public law of the imperial State had the right to permit or to forbid the exercise of the religion of private men. In its exercise of this right, it

was no doubt generally cautious and wise, at least in its dealings with polytheistic States. It is well known that the policy of Rome as a conquering power towards the religions of subject peoples was one of toleration. But that meant little more than toleration of existing religions in their local seats, or, at the farthest, in the race to which such a religion properly belonged. Because the worship of Serapis or Isis was tolerated on the Nile, as a monotheistic worship was in Judæa, it by no means followed that either of them was permitted on the banks of the Tiber. In order to be so, it required to be expressly authorised by Rome—to become a *religio licita*. And even when it was tolerated throughout the Empire, as the Jewish religion at this time was,—at least in the East,—exclusive devotion to it was tolerated only in natives of the country from which it came, and was at no time permitted to Roman citizens. For them, all over the world the old religion was imperative; and for all others, the religion of the Tiber, though not imperative, was dominant. The concessions made to the provinces for their religions were strictly concessions, not concordats. Accordingly, the concession was generally limited by the idea, *Cujus regio, ejus*

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religio. Outside the region or province where the local cult ruled—and, in the case of Jews, outside the Jewish race—it was denied the rights of publicity and of proselytism, and was restricted to a passive and a private existence. These general considerations explain some of the variations in the Roman treatment of the Jewish and Christian faiths. The old Jewish religion had the paradoxical quality of being national or local on the one hand, while on the other it claimed to be exclusive truth. The union of the two qualities went far to explain that hostility to the human race which the Romans were fond of ascribing to it. A faith which attacked that of all other men, without inviting them to share in it, invited this misconstruction. But its very want of aggressiveness saved it from collisions. When Christianity appeared, a different problem had to be dealt with. Here was a faith which not only claimed to be the absolute truth, but which refused to be confined within local limits. It was essentially proselytising, and therefore essentially public; and it demanded universal individual acceptance—acceptance by the Roman as by the Greek and the Jew. What was the answer of Roman law? "Non licet *esse* vos"—a refusal

of leave to exist. It was not always put in force. "The substance of what the Romans did was to treat Christianity by fits and starts as a crime."[1] That occasional persecution was not founded upon any specialities in the nature of Christianity, or excited by any great dislike to it as a form of worship or belief. It was persecuted generally as a form of seditious or innovating atheism, or as opposition to the established and tolerated institutions. This principle was expressed in the words said to be taken from the Twelve Tables: "Separatim nemo habessit deos, neve novos; sed ne advenas, nisi publice adscitos, privatim colunto." And the principle was supported by later "leges" or authoritative utterances, as when Marcus Aurelius denounced banishment against all who troubled the light minds of men by inducing a dread of the Divine. The opposition to Christianity on such grounds was set in motion and regulated by some of the greatest and wisest, and even, in a sense, most tolerant emperors. Trajan and the Antonines were wise and large-hearted monarchs. There was little in Christianity to repel, and there was much in it to attract such men. They were not bigots, and those around

[1] *Liberty, Equality, Fraternity*, p. 90.

them were generally sceptics. They did not believe in absolute or universal truth in matters of religion, but they did believe in the sovereignty and supremacy of the Roman State. The consequence was, that while they protected in Egypt and Palestine and Italy all *religiones licitæ* which would live side by side with each other, and claim no universal dominion, they from time to time bent the whole force of the State against the one religion which said, "For this cause are men born, that they should bear witness unto the truth," and "Every one that is of the truth heareth his voice." There is no way of explaining the history except by acknowledging that the constitutional law of Rome reserved to the State the right on the one hand to approve and licence, and on the other to repress and forbid while unlicensed, the expression of new religious convictions, the public existence of a new faith. And this prerogative was held to form part of the *majestas* or supremacy of the State.

It was so in the days of Tiberius as truly as in the *Terreur juridique* of Domitian. Pilate, as his deputy, seems to have been convinced that the claim of Jesus to be "Christ a King" was not a claim to temporal sovereignty. He

accepted in some sense His own assurance that it was a kingdom not of this world. Yet this meant, at the least, that His kingdom was a religion which He was about to found. It meant more. A religion which takes the form of a kingdom, with a king and his non-combatant servants, however little "of this *kosmos*" it may be, must be not only religion, but a Church. A universal religion, starting with individual faith, but adding immediately an obligation to love the brethren and to proselytise, is already (according to the Protestant definition) a Church, needing no visible centre and no earthly head. The defence of Jesus gave at least as much prominence to the Church idea as His disciples did during the early ages; and in His case as in theirs it gave additional seriousness to the charge of treason. A great student of history who has left us has perhaps gone too far in holding that the Roman laws against unlicensed association or combination were the unhappy root of all the persecutions,[1]

[1] "La seule chose à laquelle l'empire Romain ait déclaré la guerre, en fait de religion, c'est la théocratie. Son principe était celui de l'état laïque; il n'admettait pas qu'une religion eût des conséquences civiles ou politiques à aucun degré; il n'admettait surtout aucune association dans l'état en dehors de l'état. Ce dernier point est essentiel; il est, à vrai dire, la racine de toutes les persécutions. La loi sur les confréries, bien

too far even in holding that they were the instrument by which all these persecutions were carried on. Those laws were the branches rather than the root, but they were in living union with the root. There can be no doubt that the laws regulating *collegia*, and repressing all unlicensed associations, had from the beginning a close connection with the *majestas* of the State, and especially with its right to institute and enforce religion.[1] The two things worked together, and they did so in theory and practice. A claim of Jesus merely to found a universal religion might no doubt, in practice, have come into collision with the law of Rome. But His claim to found it as a kingdom, though not of this world—"une association dans l'état en dehors de l'état," as it is happily expressed —seems to me to have been essentially inconsistent with the public principle of that law. Christianity, in short, was incompatible with the Roman public law, and that not merely because

plus que l'intolérance religieuse, fut la cause fatale des violences qui deshonorèrent les règnes des meilleurs souverains" (Renan's *Les Apôtres*, p. 351).

[1] "La prétexte de religion ou d'accomplissement de vœux en commun est prévu et formellement indiqué parmi les circonstances qui donnent à une réunion le caractère de délit; et ce délit n'était autre que celui de lèse-majesté, au moins pour l'individu qui avait provoqué la réunion" (p. 362).

its contents were different from those of the old religion of Rome, but because its claim to universal individual acceptance and public confession conflicted with the unlimited and unbalanced sovereignty of the Roman State. Christianity appealed to the individual conscience, and in order to its even taking root in the world demanded liberty of conscience. But the Roman law, while it sometimes permitted in practice a large amount of contemptuous toleration, was at all times opposed to *rights* of conscience—opposed to them even in theory.

And on these very points, on which the Roman State was afterwards to come into conflict with Christianity, it now came into conflict with the Author of Christianity. It does not perhaps follow that Pilate, as its administrator, was bound at once to condemn Jesus. As Trajan explains in his famous letter to the Governor of Bithynia,[1] it was the duty of the higher

[1] Pliny had reported his own scruples in punishing capitally those who were merely accused of having been Christians, but not of any underlying crime. But he added: "Those who persevered in calling themselves Christians, when thrice interrogated and threatened, I ordered for execution, having no doubt that whatever the name might mean, this pertinacity and inflexible obstinacy deserved punishment." The Emperor approved his course, remarking that no fixed rule could be laid down for all cases. "Do not hunt out the Christians; but if they are brought to you and convicted, they must be punished.

magistrate to use a certain discretion in dealing with those who had transgressed the law on religion. And Pilate, who had satisfied himself of the non-existence of any immediate conspiracy on the part of the new faith, does not seem to have adverted to the future and fundamental conflict between it and the law he represented. It is clear, indeed, that he believed Jesus to be both just and harmless; and, so believing, he sinned in corruptly swaying from his first judgment, and betrayed the innocent blood. Yet had he adverted to the claim of his City to regulate religious opinion and conscience, and compared it deliberately with the counter claims of the prophet before him, or had he sent on his prisoner to answer for Himself at the imperial tribunal, it seems certain that in either case the trial would still have been followed by the tragedy which the world knows so well. Even the gentle Pliny, under the express orders of the magnanimous Trajan, devoted to the axe or the cross those whose obstinate refusal to recant and obey made them unworthy of the leniency of Rome. And the

Yet even so, if anyone denies he is now a Christian, and proves it by praying openly to our gods, let his repentance be met by pardon for the questionable past."

"obstinacy" of generations of His followers during the first three centuries found precedent and justification in His who now stood to bear witness to the same truth. For in point of fact, when Pilate ultimately sent Jesus to the cross, it was as claiming to be a King, and on the original charge of acting *adversus majestatem populi Romani.* The judgment was legal, though the unjust judge did not believe in it. For whatever Cæsar's deputy may have thought, the claim of Jesus was truly inconsistent with the claim of the State which Cæsar represented; and the world must judge between the two.

I have recalled the most famous of all trials from a legal and almost formal point of view. I have said nothing of its more memorable and characteristic aspects, — how the authoritative love which had originally arrested the eyes of disciples now deepened into an intenser glow, and a personality, which had attracted in peaceful days only a few fellow-countrymen towered at the close over suffering and shame so as henceforth to draw all men to Him. We have omitted even what might seem nearer to our subject,—how the righteousness, negatived

by a condemnation to the cross, shone out in that darkness till it became to subsequent generations not merely a centre of admiration, but the star of the world's hope.

Yet, in considering so great a transaction in this external and forensic way, we have come to some conclusions. We have found that it was a double trial, conducted with a certain regard to the forms of the two most famous jurisprudences of the world. In both trials the judges were unjust, and the trial was unfair; yet in both, the right issue was substantially raised. Even the form which that issue took was, in a sense, the same in both. Jesus Christ was arraigned on a double charge of treason; the treason in the Theocratic court being a (constructive) speaking against God, while in the Imperial court it was a (constructive) speaking against Cæsar. But under these tortuous traditions of a twofold law the real historical question was twice-over reached, and the true claim of the accused was made truly known. He died because in the ecclesiastical council He claimed to be the Son of God and the Messiah of Israel, and because before the world-wide tribunal He claimed to be Christ a King.

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